LETTERS

TO THE HONOURABLE

Mr. Juſtice BLACKSTONE,

CONCERNING

His EXPOSITION of the Act of TOLERATION,

AND

Some POSITIONS relative to RELIGIOUS LIBERTY,

In his Celebrated

COMMENTARIES on the Laws of England.

By PHILIP FURNEAUX, D.D.

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MDCCLXX.

MVSEVM
BRITAN
NICVM

THE

PREFACE.

PErſecution is unwarrantable in any cauſe; yet it may moſt naturally be expected in favour of a bad one. I do not much wonder, therefore, that the church of Rome hath recourſe to it in ſupport of her manifold corruptions and uſurpations. But that Proteſtants ſhould have imitated her in this greateſt of all her enormities, and have thereby imprudently given a ſanction to her cruel treatment of themſelves, is aſtoniſhing. Nevertheleſs, that it is true, the hiſtory of our own country abundantly teſtifies.

At the beginning of the Reformation, in the reign of Elizabeth, ſeveral who had been perſecuted in the preceding reign, the Queen herſelf not excepted, diſcovered very intolerant principles, and made no ſcruple to perſecute thoſe who

differed from them. Very oppreſſive and ſanguinary laws were enacted againſt the puritans, and all nonconformiſts to the eccleſiaſtical eſtabliſhment. In the ſubſequent reigns of the male line of Stuart, ſuch laws were greatly multiplied, and the moſt ſevere and violent meaſures purſued, to accompliſh that Utopian ſcheme, an eccleſiaſtical uniformity. At length, the great Mr. Locke pleaded, with a clearneſs and ſtrength peculiar to himſelf, the cauſe of univerſal and impartial liberty of conſcience, in his celebrated Letters on Toleration. Senſible and enlarged minds quickly felt the force of his argument. But it required time for the moſt perſpicuous and cogent reaſonings, to eradicate general prejudices, and to alter the ſentiments and complexion of the publick. Even in the reign of our glorious deliverer King William, when the toleration was enacted, ſuch were the confined views of the legiſlature, that it was clogged with exceptions againſt heretics: upon whom, as well as infidels, very ſevere penalties

were

were afterwards inflicted, in the ſame reign, by a particular ſtatute. This, I am perſuaded, was not at all owing to the King, who ſeems to have had more generous ſentiments of mens religious rights; but to the blind zeal of the times, and to the high principles of ſome leading men in convocation and parliament.

However, the ſentiments and temper of the nation have been ſince greatly meliorated, eſpecially under the mild adminiſtration of the Princes of the Houſe of Hanover; to which happy reform no one contributed more, than that admirable ſecond to Mr. Locke, the late biſhop of Wincheſter *, by his excellent writings in defence of religious as well as civil liberty. Inſomuch that perſecution having been diſcouraged by the civil power, and now become a ſtranger amongſt us, the generality of people, no doubt, imagine, that this hideous monſter hath no more counte-

* Dr. Hoadly.

nance in the laws of their country than in the ſpirit of the times. The truth is, the legal ſtate of religious liberty in theſe kingdoms is very little underſtood. Men naturally preſume, that, in this free and enlightened age, the rights of conſcience, eſpecially as they ſee them poſſeſſed without reſtraint or moleſtation, have the ſame legal ſecurity with their civil rights. It will perhaps ſurprize many of my readers, if they are unacquainted with the Laws of their country, or have not read the late excellent Commentaries upon them, to hear, that Deiſts and Arians, if they declare their ſentiments, are by law incapable of holding any offices or places of truſt, bringing any action, being guardians, executors, legatees, or purchaſers of lands, and are to ſuffer three years impriſonment without bail: — that to revile, or even openly to ſpeak in derogation of the common prayer, renders a man liable to a fine of an hundred marks for the firſt offence, to one of four hundred for the

the ſecond, and for the third to a forfeiture of all his goods and chattels, and impriſonment for life: — and that the toleration-act itſelf is ſo limited, that many who are commonly thought to enjoy under it, deſervedly, every ſecurity which the law can give them, are yet ſubject to very ſevere and heavy inflictions, to their utter ruin, as the law now ſtands: — And as for thoſe comprehended within that act; if, according to the opinion of ſome lawyers, they are only exempted by it from the penalties of certain laws, and are not reſtored to a legal conſideration and capacity; upon this idea, I ſay, they lie open to ſuch inabilities and oppreſſions, that, were advantage taken of them, their very enemies would hardly wiſh their ſituation to be more deplorable. However, this confined expoſition of the toleration-act, though ſtill maintained, it ſeems, by ſome of the profeſſion, hath been happily condemned by moſt of the Judges, and is inconſiſtent with thoſe grounds, on which was found-

ed, in a particular caſe, a ſolemn judgment of the ſupreme court of judicature. And under this diſcouragement it will never again, I truſt, obtain the countenance of any court of law.

However that be, there are ſeveral perſecuting ſtatutes, thoſe which I have mentioned and ſome others, which, I think, were a reproach to the times when they were enacted, and are much more ſo to the boaſted freedom and liberality of ſentiment of the preſent age, which ſuffers them to continue unrepealed.

Let me only aſk any friend of civil liberty, what would be his reflections, if he had no ſecurity for the poſſeſſion of his rights and privileges in the laws and conſtitution of his country, but held them only through the moderation of his ſuperiors, or the ſpirit of the times? I believe, he would be extremely uneaſy, till they were fixed on a legal baſis; extremely attentive to the ſentiments and conduct of thoſe who, from their abilities, or their

their rank and ſtation, might probably obſtruct or promote ſo deſirable a ſettlement: and thoſe who, in any critical juncture, would be likely to act in oppoſition to the cauſe of liberty, would certainly be the objects of his jealouſy, if not of his averſion. Now let every ſuch friend of the civil rights of his country, whatever be his own religious opinions, and however ſecure he may himſelf be in his religious profeſſion under the protection of the law, conſider the caſe of thoſe who are obnoxious to ſuch penal ſtatutes, as, being ſtill in force, may poſſibly be employed (and he can never be ſure they will not be employed) as inſtruments of perſecution and oppreſſion. Every generous mind will make the intereſt of others, in ſuch caſes, his own; and will be far from palliating or excuſing, much more from defending, ſuch laws as are incompatible with equity and humanity, and which, by thoſe who would be thought friends of religious liberty, ſhould never

be mentioned but with diſapprobation and cenſure. What part the ingenious and learned Commentator on the laws of England, to whom the following Letters are addreſſed, hath taken, when he is conſidering ſome of thoſe ſtatutes to which I refer, is not for me to ſay: the publick, as it is fit it ſhould, will judge.

No laws which are unjuſt, and inconſiſtent with that religious liberty which it is right the inhabitants of theſe kingdoms ſhould enjoy, (and I apprehend that which they do enjoy, it is generally thought right they ſhould, becauſe they have now enjoyed it for many years unmoleſted;) I ſay, no laws which are indefenſible, and incompatible with the rights of conſcience, ſhould be ſuffered to remain unrepealed. For if it be proper, that ſuch rights ſhould be poſſeſſed in the extent in which they are through the lenity of the times, it is proper there ſhould be a legal ſecurity for the poſſeſſion of them; that they may not be trampled upon through the poſſible ca-

prices of men in power, or ſome unaccountable turn in the ſentiments of the publick. And though I would not be underſtood to inſinuate, that there is at preſent any likelihood of ſuch an infringement; yet the rights of human nature (and religious liberty in its full extent is one of theſe) ſhould never lie at the mercy of any; but on the contrary, ſhould have every protection and ground of ſecurity, which law, and the policy of free ſtates, can give them.

If any one ſay, It is right to keep a rod *in terrorem*, though it would be injuſtice or inhumanity to uſe it: I ſhall be apt to ſuſpect, that, notwithſtanding his fair pretences, when a proper opportunity offers, he will not fail to uſe it. For I am ſure, if, in the concerns of religion, human *terror* be a proper motive, human *puniſhment* is equally ſo.

N. B.

N. B. The following Letters were nearly printed off, before the Gentleman, to whom they are addreſſed, was appointed to the high ſtation which he now fills in the law. This is mentioned as an apology for a form of addreſs, which the reader will perceive is not ſuitable to his preſent character.

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ERRATA.

P. 55. l. 6. *for* fyſtems *read* ſyſtems.

Ibid. l. 17. *for* maitenance *read* maintenance.

P. 64. l. 4. *for* ren- *read* render.

P. 77. l. 5. note, *for* P. P. *read* P P.

Ibid. l. 10. *for* decretis obſequi *read* decretis nos obſequi.

LETTERS

TO

WILLIAM BLACKSTONE, Esq;

LETTER I.

SIR,

YOUR candor, I doubt not, will readily excuse an admirer of your excellent Commentaries on the laws of England, if, from a desire of their being rendered still more excellent than they are, he gives you an opportunity of reviewing some passages, which, to him at

leaſt, appear to be exceptionable, and not ſo judicious and accurate as other parts of your truly admirable performance. It were to be wiſhed, that a work, ſo nearly perfect, were *omnibus numeris abſolutum*.

My profeſſion, Sir, is not that of the law; and if it were, it would be with diffidence, at leaſt with much deference, I ſhould make remarks on the compoſition of ſo great a maſter. The point, however, which I have in view, not only is of great importance to myſelf, amongſt others, who diſſent from the eſtabliſhed church; but ſome caſes of a publick nature, which have come under my obſervation, have given me frequent occaſion to conſider it with no ſmall attention. Nevertheleſs, if I had not found my own ſentiments authorized and ſupported by their congruity to the declared opinion of perſons of the moſt accurate and comprehenſive acquaintance with the laws of England, and by thoſe general grounds and reaſons, on which

which the moſt ſolemn judgments have been given, I ſhould hardly have preſumed to offer to you, and to the publick, the following obſervations.

I remember, when, ſome years ago, I read your Analyſis of the laws of England, and obſerved, that, in the third chapter of the fourth book, under the head of Offences againſt the eſtabliſhed church, you mentioned "Nonconformity to its wor-"ſhip—through Proteſtant diſſenting;" and added "Penalty: ſuſpended by the "toleration-act:" I then imagined, that your ſentiments of the intent and influence of that act, and of the ſtate and condition of the Diſſenters under it, were confined and narrow. However, I flattered myſelf, that, when you came to conſider the matter more thoroughly in your larger work, you would ſee reaſon to repreſent the caſe of the Diſſenters ſomewhat differently, and do it, as I think, more juſtice.

But, in the fourth volume of your Commentaries, chapter the fourth, p. 53. I am ſorry to find the following paſſage: "The penalties (*viz.* thoſe which are laid "upon the Diſſenters by abundance of "ſtatutes, in particular by 31 Eliz. c. 1. "17 Char. II. c. 2. 22 Char. II. c. 1.) "are all of them ſuſpended by the ſtatute "1 Will. & Mar. ſt. 2. c. 18. commonly "called the toleration-act, which exempts "all Diſſenters (except Papiſts, and ſuch "as deny the Trinity) from all penal laws "relating to religion, provided they take "the oaths of allegiance and ſupremacy, "and ſubſcribe the declaration againſt "Popery, and repair to ſome congrega-"tion, regiſtered in the biſhop's court or "at the ſeſſions, the doors whereof muſt "be always open: and diſſenting teachers "are alſo to ſubſcribe the thirty-nine ar-"ticles, except thoſe relating to church-"government and infant-baptiſm. Thus "are all perſons, who will approve them-"ſelves no Papiſts or oppugners of the "Trinity,

" Trinity, left at full liberty to act as their " conſciences ſhall direct them in the mat- " ter of religious worſhip."

This is all you ſay of the toleration-act in your Commentaries; and before I make any obſervations upon it, I beg leave to mention a paſſage in your anſwer to Dr. Prieſtley; who had obſerved *, that he " did not know that MERE *nonconformity* " was any crime at all in the laws of Eng- " land—ſince the act of toleration:"—You ſay †, that you " beg leave to inform Dr. " Prieſtley, ſince it ſeems he is yet to learn " it, that nonconformity is ſtill a crime " by the laws of England, and hath ſevere " penalties annexed to it, notwithſtanding " the act of toleration, (nay expreſsly re- " ſerved by that act) in all ſuch as do not " comply with the conditions thereby en- " joined. In caſe the legiſlature had in- " tended to aboliſh both the crime and the " penalty, it would at once have repealed

* Remarks, p. 49. † Reply, p. 11, 12.

" all the penal laws enacted againſt non-
" conformiſts. But it keeps them expreſs-
" ly in force againſt all Papiſts, oppugners
" of the Trinity, and perſons of no reli-
" gion at all: and only *exempts from their*
" *rigour* ſuch ſerious, ſober-minded Diſ-
" ſenters, as ſhall have taken the oaths,
" and ſubſcribed the declaration at the ſeſ-
" ſions, and ſhall regularly repair to ſome
" licenſed *" (regiſtered) " place of reli-
" gious worſhip. But though theſe ſta-
" tutes oblige me to conſider nonconformi-
" ty as a breach of the law, yet (notwith-
" ſtanding Dr. Prieſtley's ſtrictures) I ſhall
" ſtill continue to think, that *reviling the*
" *ordi-*

* *Regiſtered* is the word in the act. A *licence*, in its common acceptation, implies a power of refuſal: but in the preſent caſe there is no ſuch power: for the clerk of the peace, or the regiſter of the archdeacon's and biſhop's court, is by the act *required* to regiſter ſuch place of meeting, upon its being certified. Accordingly, where this hath been refuſed by uninformed juſtices and clerks of the peace, a *mandamus*, upon application, hath been always granted, as it muſt be, to compel their compliance. Yet in the biſhop's court of the dioceſe of Wincheſter, (I know not whether in any other) notwithſtanding that the toleration-act

" *ordinances of the church* is a crime of a " much groſſer nature than the other of " mere *nonconformity*."

So that, in your opinion, Sir, mere nonconformity is a crime, though not ſo great as ſome others, and is ſo conſidered in the eye of the law, notwithſtanding the toleration-act. The *penalties*, indeed, by that act are SUSPENDED, but the CRIME ſubſiſts ſtill.

Indeed, in one place you expreſs yourſelf as if you intended a limitation: " Non-" conformity," you ſay, " is ſtill a crime, " and hath heavy penalties annexed to it, " notwithſtanding the act of toleration, " (nay, expreſsly reſerved by that act) *in*

act requires only that the place of worſhip be *certified*, an *humble petition* is, at leaſt lately was, inſiſted upon, to the Right Reverend Father in God, *&c.* alledging a variety of particulars in ſupport of the petition, and *humbly praying*, that he would be PLEASED to licence ſuch a place of worſhip. To ſuch an unwarrantable extent hath the idea of licencing been carried. But, I hope, this practice is or will be diſcontinued. If it is not, and ſhould be legally queſtioned in the courts at Weſtminſter, as perhaps it may, it will be quickly found, that it cannot be ſupported.

" *all ſuch as do not comply with the condi-*
" *tions thereby enjoined.*" And this obſervation, in itſelf, is very true. But you ſeem to introduce it for the ſake of a conſequence, which, I think, will by no means follow from it; for in the next words you obſerve, " In caſe the legiſlature " had intended to aboliſh both the crime " and the penalty, it would at once have " repealed all the penal laws enacted a- " gainſt nonconformiſts." Your argument I take to be this: Becauſe the legiſlature hath not at once repealed all the penal laws againſt nonconformiſts, that is, as you go on to obſerve, " againſt all Papiſts, op- " pugners of the Trinity, and perſons of " no religion at all;" therefore (a ſtrange *non-ſequitur* ſurely!) the legiſlature did not intend to aboliſh the crime, as well as the penalty, in thoſe who are NO Papiſts, or oppugners of the Trinity, or perſons of no religion at all, but mere nonconformiſts to the eſtabliſhed rites and modes of worſhip. Theſe ſerious ſober-minded Diſſenters

ters are *only exempted from the* RIGOUR *of the penal laws*. They are ſtill *criminals* it ſeems, only the *penalties* due to their crime are *ſuſpended*; and their nonconformity is ſtill a breach of the law.

Upon this principle, the term, ſuſpenſion of penalty, uſed in your Analyſis and Commentaries with reſpect to the effect of the toleration-act, may be eaſily accounted for, and appears conſiſtent.

It is true, in your Commentaries you immediately add, "which" (namely, the toleration-act) "exempts all Diſſenters "(except Papiſts, and ſuch as deny the "Trinity) from all penal laws relating to "religion, provided they take the oaths," *&c.* But this ſeems to mean nothing more than the ſuſpenſion before ſpoken of, and to be only exegetical of that term; to be an "exemption" (as you expreſs it in your reply to Dr. Prieſtley *) "from the ri-"gour" or penalties "of thoſe laws,"

* p. 11, 12.

but

but not from the crime on which the penalties were grounded. This, I apprehend, to be your real meaning: I ſhould be glad to find myſelf miſtaken. I think, the truth is, that nonconformiſts (namely, to the peculiar rites, diſcipline, and government of the church, as this word always ſignifies) are freed from all the effects of the penal laws, as to crime as well as penalty; but theſe ſtatutes remain in force, both as to crime and penalty, with reſpect to thoſe who are *more* than mere nonconformiſts; who are Arians, or Papiſts, or perſons of no religion at all: and that, not on account of their nonconformity, but of their ſuppoſed hereſy, or enmity to the government, or infidelity and irreligion: which is very plain; for, if they purge themſelves of theſe, and ſhew, in the way preſcribed by the toleration-act, that they are no Arians, Popiſh recuſants, or infidels and perſons of no religion, they are immediately, notwithſtanding their non-

nonconformity, unaffected by theſe ſtatutes.

The queſtion then is, Whether nonconformity be a *crime* in thoſe who *have complied with the conditions* of the toleration-act? or, What is the ſtate of Diſſenters *under that act?* Are they in the eye of the law criminals, though the penalties are ſuſpended? or, Are they reſtored to a legal capacity, and to a freedom from all crime as well as penalty, in virtue of the toleration-act?

Now, in my opinion, to repreſent nonconformity as a crime, the penalties of which are merely ſuſpended, is a defective and erroneous account of the ſtate of the Diſſenters under the toleration-act. And to ſhow this,

The FIRST obſervation I would make is: That ſuſpenſion of penalty is not the language of the toleration-act. The act uſes a comprehenſive and forcible expreſſion, which

which excludes the *crime* as well as the *penalty*; it leaves theſe penal ſtatutes *no operation at all*, with reſpect to the Diſſenters, who are under the toleration-act; it *repeals* and *annihilates* thoſe ſtatutes with regard to ſuch Diſſenters. The words of the toleration-act are, that thoſe ſtatutes ſhall not be conſtrued to EXTEND to ſuch perſons. And if they are not to be conſtrued to *extend* to them, nothing can be plainer, than that they are not to be conſtrued to *affect them at all*, either as to crime or penalty. Now, if the ſtatute-law doth not make this a crime, it is certain, it is no crime at all by the *common law*; becauſe the conſtitution of the church, and its peculiar doctrine, worſhip, diſcipline, and government, are founded wholly upon the ſtatute-law, and not at all upon the common law *.

Inſtead,

* "If it is a crime not to take the ſacrament at church," ſaid a Noble Lord in a high department of the law, (and by

Inſtead, therefore, of ſaying in the Commentaries, that the *penalties* are all of them *ſuſpended by the toleration-act*, which exempts all Diſſenters, except Papiſts, and ſuch as deny the Trinity, from all penal laws, *&c.* ſhould it not have been ſaid, that all penal laws for nonconformity are

by parity of reaſon, if it had been to the particular purpoſe of his argument at that time, he might have ſaid, If it be a crime not to go to church, or join in any of its publick offices) "it muſt be a crime by ſome law; which muſt be "either common or ſtatute law; the canon law inforcing "it depending wholly upon the ſtatute-law. Now the ſta-"tute-law is repealed, as to perſons capable of pleading, "that they are ſo and ſo qualified; and, therefore, the "canon law is repealed with regard to thoſe perſons. If "it is a crime by common law, it muſt be ſo either by prin-"ciple or uſage. I never heard of any uſage or cuſtom, "that ſhould make it *a crime not to conform to the religion of "a country not eſtabliſhed by poſitive ſtatute.* As for prin-"ciple, it muſt be allowed, that the principles of natural "and revealed religion and morality are the principles of "common law: ſo that any perſons oppoſing theſe prin-"ciples are actionable at common law. But neither the "principles of natural religion, and much leſs thoſe of "revealed religion and morality, will admit of a perſon's "being perſecuted for opinions differing from others with "reſpect to particular modes of worſhip. It is againſt "reaſon, and contrary to the fitneſs of things."

repealed,

repealed, with regard to thoſe Diſſenters, who are qualified as the act directs? And would it not have been proper to mention, that the diſſenters are freed from proſecution in the eccleſiaſtical courts? and that there is nothing, therefore, in the law of England, which can make mere nonconformity a crime, any more than liable to penalty?

A SECOND obſervation I would make is: That both the crime and penalty of mere Proteſtant nonconformity to the eſtabliſhed rites and modes of worſhip is aboliſhed by the act of toleration, is evident from the protecting clauſes of that act: which, in the words of a great lawyer, have rendered the Diſſenters way of worſhip, "not "only innocent, but lawful; have put it, "not merely under the connivance, but "under the protection of the law, have "*eſtabliſhed it*. For nothing can be plain-"er, than that the law protects nothing in "that very reſpect, in which it is, at the

" ſame time, in the eye of the law a crime. " Diſſenters, by the act of toleration, there- " fore, are reſtored to a legal conſideration " and capacity." And this is a view of their condition under the toleration-act of great importance. For many conſequences will from hence follow, which are not mentioned in the act, and which would not follow, if the act amounted to nothing more than a ſuſpenſion of penalty. For inſtance, previous to this act, a legacy, left to diſſenting miniſters and diſſenting congregations, was not eſteemed a valid one, becauſe the law knew no ſuch perſons, and no ſuch aſſemblies; and it was left to what the law called ſuperſtitious purpoſes. But will it be ſaid in any court in England, that ſuch a legacy is not a valid one now? and yet there being nothing ſaid of this in the toleration-act, it can only follow, conſequentially, from the Diſſenters being reſtored by that act to a legal conſideration and capacity, and being no longer criminal in the eye of the law,

as

as they were before that act was enacted.

The THIRD obſervation which I would make is: That the unanimous judgment of the commiſſioners delegates *, and of the Houſe of Lords † affirming that judgment, in the great cauſe between the city of London and the Diſſenters, concerning the fine inflicted by a by-law of the city on thoſe who refuſed the office of ſheriff, was grounded entirely on this opinion, "That "the toleration-act removed the crime as "well as the penalty of mere nonconfor-"mity."

The caſe was this: By the corporation-act no perſon can be placed, choſen, or elected into any office of or belonging to the government of any corporation, who

* Lord Chief Baron Parker, Mr. Juſtice Foſter, Mr. Juſtice Bathurſt, and Mr. Juſtice Wilmot, now Lord Chief Juſtice of the Common Pleas. They delivered their opinions *ſeriatim*, on the 5th of July 1762. after hearing counſel ſeveral days. Lord Chief Juſtice Willes, who was firſt in the commiſſion, died before the hearing.

† On the 7th of February 1767.

hath not taken the ſacrament in the church of England within a year preceding the time of ſuch election. The defendant* pleaded, That not having received the ſacrament at church within a year preceding, he was both uneligible and diſabled from ſerving; and that, being a Diſſenter within the deſcription of the toleration-act, and thereby freed from all obligation to take the ſacrament at church, his omitting it was no way criminal; and that, therefore, the diſability he had incurred was a lawful plea in bar of this action, to excuſe him from the fine impoſed upon thoſe who refuſed the office of ſheriff. The city having brought the cauſe before the Houſe of Lords by appeal from the commiſſioners delegates, who had given judgment for the defendant; the Houſe ordered this queſtion to be propoſed for the opinion of the Judges, How far the defendant might, in the preſent caſe, be allowed to plead his

* Allen Evans, Eſq;

diſability in bar of the action brought againſt him?

It was allowed on all hands, that if his nonconformity, and his conſequent diſability, was criminal, he could not plead it.

And for this reaſon one of the Judges * was of opinion, (contrary to the reſt of his brethren), that the defendant's diſability, in the preſent caſe, could not be pleaded; becauſe, as he ſaid, the toleration-act amounted to *nothing more than an exemption of Proteſtant Diſſenters from the penalties of certain laws therein particularly mentioned*; and the corporation-act not being mentioned therein, the toleration-act could have no influence upon it; and therefore his diſability, incurred by his nonconformity in conſequence of the corporation-act, was, in his opinion, a culpable one, and rendered him liable to any penalties, to which any others are liable for refuſing to ſerve the office of ſheriff; inaſmuch as no

* Mr. Baron Perrott.

man

man can diſable himſelf: but if he refuſed to take the ſacrament according to the rites of the church of England, he diſabled himſelf; and the fine impoſed was a puniſhment upon him for the crime of his nonconformity, from which he could plead no legal exemption.

But all the other Judges * were of a contrary opinion, That the corporation-act expreſsly rendered the Diſſenters uneligible and incapable of ſerving; its deſign being to keep them out, as perſons at that time ſuppoſed to be diſaffected to the government: and though the diſability ariſing from hence could not *then* have been pleaded againſt ſuch an action as is now brought againſt the defendant, nonconformity being *then* in the eye of the law a crime, and no man being allowed to excuſe one crime by another; yet the caſe is different

* Mr. Juſtice Hewitt, now Lord Lifford, and Chancellor of Ireland; Mr. Juſtice Aſton, Mr. Juſtice Gould, Mr. Baron Adams, Mr. Baron Smythe, Mr. Juſtice Clive.

ſince the toleration-act was enacted, *that act* amounting to *much more* than a mere exemption from the penalties of certain laws, and having an influence upon the corporation-act conſequentially, though the corporation-act is not mentioned therein; by freeing the Diſſenters from all obligation to take the ſacrament at church, aboliſhing the crime as well as penalties of nonconformity, and allowing and protecting the diſſenting worſhip. The defendant's diſability, therefore, they ſaid, was a lawful one, a legal and reaſonable, not a criminal excuſe; it was not in the ſenſe of the law diſabling himſelf; the meaning of that maxim, "That a man ſhall not diſ-"able himſelf," being only this, that no man ſhall diſable himſelf by his own wilful fault or crime; and nonconformity being no longer a crime ſince the toleration-act was enacted, he is diſabled by judgment of parliament, namely, by the corporation-act, without the concurrence or intervention of any crime of his own; and

therefore he may plead this diſability in bar of the preſent action.

So that the arguments of the Judges turned upon this ſingle point, That the toleration-act removed the *crime* as well as the *penalties* of nonconformity; and in this they all, except one, agreed. The whole was ſummed up, and the reaſoning on the oppoſite ſide examined and confuted, with his uſual perſpicuity and force of argument, by Lord Mansfield *; and upon this ground the Houſe of Lords affirmed, *nemine contradicente*, the judgment of the commiſſioners delegates.

In ſtating, therefore, the caſe of the Diſſenters under the toleration-act, ſhould not ſome notice have been taken of the protecting clauſes of that act, and of their

* I have in my poſſeſſion a particular account of the reaſoning of the Noble Lord upon this point, in his ſpeech previous to his motion for the affirmance of the judgment: an account which, by many very competent judges who were preſent, and ſome of them members of the ſupreme court by which the cauſe was determined, hath been thought to be no inaccurate one; a copy of which (though not exact) was publiſhed, entirely without my knowledge, in the Whitehall Evening Poſt of January 9.

influence and operation upon the legal condition and capacity of the Diſſenters? Surely the ſuſpenſion of penalties is not all that this act amounts to.

Whether the toleration-act is extenſive enough as to thoſe who *ſhould be* its objects, is one queſtion; what is its meaning and intent, with reſpect to thoſe who *are* its objects, is another. Mere nonconformiſts with reſpect to the worſhip, diſcipline, and government of the church, are certainly its objects: and I think it ought not to have been limited, as it is, in regard to the doctrinal articles of religion. But ſtill, with reſpect to thoſe perſons whom it does comprehend, that is, the mere nonconformiſts to the conſtitution and rites of the church, it puts them on a very liberal footing, not on that of *connivance* only, but of *protection* alſo. And the more the idea of *legal protection* is examined, the more will it appear to juſtify the ſtrong expreſſion, which the Noble

Lord before mentioned uſed concerning the diſſenting worſhip, that it is ESTABLISHED. If the juſtices of the peace at the quarter-ſeſſions, or the regiſter of the biſhop's court ſhould refuſe to regiſter a diſſenting place of worſhip, a *mandamus* always is and muſt be granted, upon application, in Weſtminſter-hall, to compel them to the diſcharge of their duty. And is it not abſurd to ſuppoſe, that a *mandamus* muſt iſſue in a caſe, which the law regards as criminal? Is not the law to be conſidered as giving its *whole ſanction*, and exerting its *whole energy*, in reſpect to whatever juſtifies and requires a *mandamus?* and does not this amount, ſtrictly ſpeaking, to the idea of the word *eſtabliſhed?*

When the late incomparable Speaker of the Houſe of Commons, Mr. Onſlow, was informed of the expreſſion, which the learned and Noble Lord uſed on this occaſion, he obſerved, in a converſation with which he honoured me, that this was the

language he himſelf had always held; that, as far as the authority of the law could go in point of *protection*, the Diſſenters were as *truly eſtabliſhed* as the church of England *; and that an eſtabliſhed church, as diſtinguiſhed from their places of worſhip, was, properly ſpeaking, only an *endowed church*; a church, which the law not only protected, but endowed with temporalities for its peculiar ſupport and encouragement †.

If

* The penalties inflicted by the act of toleration on thoſe who diſturb any diſſenting congregation for divine worſhip, or miſuſe the preacher, are preciſely the ſame as on thoſe who diſturb the congregation, or miſuſe the preacher, in any cathedral, pariſh-church, or chapel; and diſſenting miniſters, as well as the clergy of the church of England, are excuſed from all burdenſome offices.

† I ſuppoſe it is upon this idea, that, ſince the toleration, it hath been the invariable practice of our Sovereigns, in their ſpeeches to their parliaments upon their acceſſion, after declaring their affection to the church of England, and reſolution to ſupport it, to add, That they will maintain the toleration inviolable. When this was done at the commencement of the preſent reign, the Lords, in their addreſs of thanks, paid a juſt and expreſſive compliment to the

If it ſhould ſo happen, after all, that I ſhould have miſtaken your meaning, and that your idea of the condition of the Diſſenters under the toleration-act is the ſame with mine, that they are freed from the *crime* as well as penalties of their nonconformity; I apprehend, ſome alteration will ſtill be neceſſary in your repreſentation of the purport of the toleration-act: which repreſentation, as it now ſtands, leads your reader naturally, and almoſt neceſſarily, to conclude, that your apprehenſion of the deſign of that act is not ſo enlarged as, in my humble opinion, it ought to be. And

the toleration, by ſtiling it, THAT SUREST CEMENT OF THE PROTESTANT INTEREST IN THESE KINGDOMS. And this expreſſion, in anſwer tc that part of the royal ſpeech, which contained a promiſe of preſerving and *ſtrengthening* the conſtitution in *church* and ſtate, was the more appoſite, as it conveyed this certain truth, That the union of Proteſtants among themſelves in mutual affection and eſteem, however they may differ in formularies of doctrine or rites of worſhip, is the beſt ſupport of their common intereſt; and that the church of England, in particular, can never be more *ſtrengthened*, or placed on a firmer foundation, than by encouraging the generous principles of *toleration*, and an impartial regard to the right of *private judgment*.

if,

if, upon further reflection, you are convinced of this; I am very ſure, from the ſpecimens you have already given of your candor in ſimilar caſes, you will take care to guard againſt any miſapprehenſion of your judgment in future editions of your incomparable book. That openneſs to conviction, and that conſequent diſpoſition to correct miſtakes, which you have diſcovered, does you more honour, in a moral view, than all your intellectual abilities, great as they are; inaſmuch as integrity and ingenuity of heart deſerve, and will receive from thoſe whoſe good opinion is worth regarding, much more applauſe than the acuteſt diſcernment, or the profoundeſt and moſt accurate judgment. I am,

SIR,

With great eſteem,

Your obedient humble ſervant,

P. F.

LETTER II.

SIR,

YOU have a diſpoſition, I am perſuaded, too ingenuous and liberal, to be offended at a candid, though free diſcuſſion of your ſentiments: I ſhall make no apology, therefore, for laying before you my remarks on ſome other paſſages, as I have already done on one particular point, in your juſtly-admired Commentaries on the laws of England.

When Dr. Prieſtley obſerved, in his Remarks, p. 48. that you quoted with approbation * the ſtatute of William the Third againſt "perſons educated in the

* Comment. vol. iv. p. 50.

"Chriſtian

" Chriſtian religion, or profeſſing the ſame,
" who ſhall, by writing, printing, teach-
" ing, or adviſed ſpeaking, deny any one of
" the perſons in the Holy Trinity to be
" God, or maintain that there are more
" gods than one:" by which ſtatute they are made liable to the pains and penalties inflicted by the ſame ſtatute on apoſtacy; that is, " for the firſt offence, they are
" rendered incapable of holding any office
" or place of truſt; and for the ſecond, are
" rendered incapable of bringing any ac-
" tion, being guardian, executor, legatee,
" or purchaſer of lands; and are to ſuffer
" three years impriſonment without bail *:" I ſay, when Dr. Prieſtley remarked, that you cited this ſevere ſtatute with approbation, you diſclaimed the imputation in

* The Emperor Marcian, in an edict againſt the Eutychians and Apollinariſts, rendered them incapable of diſpoſing of their eſtates, of making a will, or of inheriting any thing by the will of others, or by deed of gift. *Concil. tom.* 2. *p.* 678. *edit. Hard.* Some of the clauſes in the act of parliament ſeem to have been copied from this worthy original.

your Reply *; and alledged, that you "barely recited the ſtatute, without either "approving or diſapproving it." It will ſurely, then, be proper to omit theſe words in your Commentaries †, which you will find a little before your citation of this ſtatute, "Every thing is now as it ſhould be, "unleſs perhaps that hereſy ought to be "more ſtrictly defined," &c. This, your readers will be apt to think, amounts to an approbation of all that follows; and particularly of the act here referred to, which is preſently after quoted as now in force; and therefore, as one of the things which, you ſay, "are as they ſhould be."

Truly, Sir, it is much to be deſired, that you would review this whole paragraph with attention. The only objection which you make to the intolerant and perſecuting laws now in force againſt hereſy is, that "hereſy is not defined in them with ſuffi-

* Reply, p. 6. † Comment. p. 49.

"cient

" cient preciſion;" and, you think, " no " proſecution ſhould be permitted, even in " the eccleſiaſtical courts, till the tenets in " queſtion are, by proper authority, pre- " viouſly declared to be heretical." And provided this be done, " every thing is " then," you ſay, " as it ſhould be."

So that, in your opinion, it is fit, that hereſy ſhould be puniſhed with temporal penalties; only care ſhould be taken, that what is hereſy be firſt ſettled by proper authority *. But here the queſtion occurs, What is proper authority? and where is it lodged? I ſuppoſe, Sir, you will place it either with the eccleſiaſtical governors, or with the legiſlature. But in the hands of

* The nature of hereſy, in the ſcripture-ſenſe of the word, I think, hath been very much miſtaken. The heretics, whom, in the New Teſtament, we are directed to avoid, were not the humble, modeſt, and peaceable, tho' erroneous Chriſtians, who adhered to the authority of Chriſt, and deſired to know and do his will; but the proud, pragmatical, turbulent party-men, who diſturbed and divided the church by their impoſitions, and innovations in the terms of brotherly affection and Chriſtian communion, and by aſſuming an authority over their fellow Chriſtians. Hereſy,

of either, it will certainly amount to nothing more than human authority, the authority of fallible men; which, I apprehend, upon examination, will be found to be no authority at all in the preſent caſe, that is, in defining what is true faith, and what is hereſy, and marking out their reſpective boundaries.

If the ſcripture is to determine for us, the point, I think, is clearly decided. For our bleſſed Saviour hath commanded his diſciples not to be "called maſters; for," ſaith he, "one is your Maſter, even Chriſt, "and all ye are brethren *;" and this he ſaid in oppoſition to the authority which

reſy, in the ſenſe of ſcripture, doth not conſiſt in ſimple error; nor were thoſe heretics, who were anathematized and perſecuted; but only thoſe who anathematized and perſecuted others, refuſing to acknowledge them for true Chriſtians, on account of their ſuppoſed or real miſtakes. Whoſoever carefully and conſcientiouſly conſults the ſacred oracles, with a deſire of knowing and doing the will of Chriſt, cannot be an heretic in the ſcripture-meaning of the expreſſion. See Hallet's Notes and Diſcourſes, vol. 3. diſc. ix. throughout, eſpecially p. 390.

* Matth. xxiii. 8, 10.

the

the Jewiſh rabbies aſſumed, in deciding queſtions of their law. And the apoſtles, who certainly, if any perſons, might have pretended to authority in matters of faith, declared, that they "had no dominion o-"ver the faith" of Chriſtians; but were "only helpers of their joy *." They appealed to reaſon and conſcience, and referred the final deciſion to every man's own private judgment: "We ſpeak as unto "wiſe men; judge ye what we ſay †." The Bereans are commended for "ſearch-"ing the ſcriptures" of the Old Teſtament "daily," to ſee "whether the things" which the apoſtles declared to them "were "ſo" as they reported ‡. And it is the duty of every Chriſtian to endeavour, for himſelf, to underſtand the ſacred oracles, as well as he is able, in the uſe of all the means and helps which Divine Providence puts in his power §.

* 2 Cor. i. 24. † 1 Cor. x. 15. ‡ Acts xvii. 11.

§ Human helps and aſſiſtances, while they are only employed to open and inform the underſtanding, are very deſirable

Indeed, every man's private perſuaſion or belief, muſt be founded upon evidence propoſed to his *own mind*; and he cannot but believe, according as things appear to HIMSELF, not to others; to his own underſtanding, not to that of any other man. Conviction is always produced by the *light* which is ſtruck into the mind; and never by compulſion, or the force of human authority *.

But

ſirable and uſeful. But human authority, ſitting in judgment on points of faith, and deciding caſes of hereſy, and controuling, without enlightening, our underſtandings, is a very different thing. There is, ſurely, ſufficient room for our receiving inſtruction and aſſiſtance in matters of religion, without being deprived of our right of judging, in the laſt reſort, for ourſelves. And that we muſt do in oppoſition to all human authority, in whatſoever hands it be lodged, and with whatſoever venerable titles it comes recommended; or elſe we violate our allegiance to Chriſt, the only lawgiver and king in his church.

* If it be urged, that we believe many things upon *human authority:* I admit it, in caſe by authority we mean *teſtimony*. But there is a manifeſt difference between human teſtimony, as to matters of fact; and human authority, as to matters of opinion, and principles of truth. The former may be, and often is, a rational ground of belief; the lat-

But it may be alledged, perhaps, that other mens underſtandings are better, and more penetrating and judicious than ours; or, that great numbers, eſpecially of perſons venerable for their age, as well as for their piety and learning, are more likely to be in the right, than a few individuals; and that, conſequently, it will be *ſafer* to be guided by their judgments than by our own. To this I reply: That a man's own underſtanding, be it more or leſs judicious, is the only faculty which God hath given him to diſtinguiſh truth from error: and as every man is accountable only for the

ter is believing upon no evidence, and is a renunciation of reaſon. The authority or teſtimony of the apoſtles, and firſt teachers of Chriſtianity, was accompanied with divine credentials; and this rendered it a ſufficient foundation for the belief, both of the facts and doctrines they revealed. And, indeed, human teſtimony, under the influence of inſpiration, and ſupported by miraculous interpoſition, is *always* a juſt ground of our belief of religious truth, as well as facts; but the authoritative decrees and injunctions of fallible, uninſpired men, *never*. The former claim an abſolute regard, as being a proof and evidence of a divine miſſion; the latter are no evidences of religious truth, or ground of belief of it at all, and therefore deſerve no regard.

uſe of his own underſtanding, not for that of other mens; conſequently, his ſafety conſiſts, not in giving up his own to the direction and controul of others, but in uſing it himſelf to the beſt advantage. And ſhould he, in the careful and conſcientious uſe of it, err; that error will never be imputed to him as a crime: Whereas, if he follow the judgment of other men, though ever ſo wiſe and learned, contrary to his own ſenſe of things, he may perchance *profeſs* what is *right*, but he *does* what is *wrong*, and is highly criminal in the ſight of God. For, the profeſſion of any doctrine ſhould always follow conviction of the truth of it; at leaſt, a man muſt never profeſs what is contrary to his conviction. To embrace, or profeſs, any point which he does not believe to be true, in compliment to human authority, is exalting *human* into the place of *divine* authority; and ſaying in one word, That it is better to obey man than God.

So that for any man, or body of men,

whether clergy or laity, to aſſume an authority, firſt, to define what is hereſy; and then to condemn and puniſh it by temporal penalties, is the ready way to make men hypocrites; while it can, in no caſe, render them true believers or good men *. But not to inſiſt upon this: what I would principally obſerve to you, Sir, who are by profeſſion a lawyer, is:

That hereſy not being ſufficiently defined by our laws, ſeems to be no ſmall ſecurity, in connection with the lenity of the times, that thoſe laws will not be executed; on account of the difficulty of defining what

* Submitting to the deciſions of human authority in matters of faith, is ſometimes prejudicial to, and even ſubverſive of, true religion, where it does not iſſue in downright hypocriſy. For as, on the one hand, by the exerciſe of our rational faculties in ſearching after truth, we are not only likely to arrive at it, but to improve in the love of it, in candor, docility, and openneſs to conviction; and are diſpoſed to ſubmit to its influence: ſo, on the contrary, in proportion as we reſign ourſelves to the conduct of human authority, truth loſes its charms, and its influence over us; and we become blind to its cleareſt evidences, and brighteſt characters, and are thus prepared to be led into the moſt abſurd ſuperſtitions, and vileſt corruptions of religion.

is hereſy; and, perhaps, of finding a jury that will be forward in defining it, where the law hath left it doubtful and undefined. What, therefore, you, Sir, imagine a defect in the law, which ought to be ſupplied, appears to me to be a circumſtance very favourable to the ſecure enjoyment of the rights of conſcience; and, I hope, criminal proſecutions for opinion, either in civil or eccleſiaſtical courts, will never be rendered more eaſy and feaſible, than they are at preſent.

The next enquiry, on ſuppoſition hereſy is cognizable and puniſhable by human authority, (as you ſeem to think) naturally is: What that puniſhment ſhall be?

You tell us, that, "under theſe reſtric-
"tions" (namely, that hereſy ſhould be more ſtrictly defined; and no proſecution permitted, till the hereſy is by proper authority aſcertained) "it ſeems neceſſary,
"for the ſupport of the national religion,
"that the officers of the church ſhould

"have power to cenſure heretics, but not "to exterminate or deſtroy them *." In this aſſertion is it not plainly ſuppoſed, that the cenſures of the church are to be attended with temporal penalties? only not ſo as to exterminate or deſtroy the heretic. In the name of humanity, Sir, is this the only exception to the extent and effect of the church's cenſures, that they ſhall not reach to utter extermination? Are all other pains and penalties proper, in whatſoever degree they are inflicted, which affect only a man's liberty or property, provided he is not deſtroyed thereby? If this be your meaning, (and, I think, you ſhould have left no ground for ſuſpicion that it is your meaning, if it is not) what more ample ſcope could any perſecutor deſire for his wanton cruelty, than you allow; unleſs, like another Bonner, he thirſted for human blood?—Excuſe me, Sir, the warmth of my expreſſion. This ſentence of yours muſt, ſurely, have dropt from

* Comment. vol. iv. p. 49.

you inadvertently; and can never ſeriouſly be intended to mean, what it ſeems to imply.

To examine the point more thoroughly: Is the infliction of temporal penalties upon heretics, really neceſſary to the ſupport of a national eſtabliſhment? If ſo, how comes it to paſs, that a national eſtabliſhment is in its nature ſo oppoſite to the genius of Chriſtianity, of that kingdom which is not of this world, and which conſiſts not in any thing this world can beſtow or ſecure, but only in righteouſneſs, truth, and peace? Religion is ſeated in the heart of man, and converſant with the inward principles and temper of the mind; and it cannot, therefore, properly ſpeaking, be eſtabliſhed by human laws, or enforced by temporal puniſhments. There is nothing in a fine, or a dungeon, or in any other penalty which the magiſtrate can inflict, that is calculated to produce conviction. Truth can only be ſupported and propagated by reaſon and argument;

ment; in conjunction with that mild and perſuaſive inſinuation, and that openneſs and candor, and apparent benevolence in its advocates, which are ſuited to invite mens attention, and diſpoſe them to examination. No civil puniſhments are adapted to enlighten the underſtanding, or to conciliate the affections. And therefore the "weapons" which the miniſters of religion (or, in your ſtile, "the officers of "the church") are directed to uſe "are "not carnal *," but ſpiritual.

For my own part, I believe, it would have fared much better with the intereſt of true religion, if it had been left to make its way by the force of its own native excellence, and evidence only, than it hath done ſince it hath been incorporated with civil conſtitutions, and eſtabliſhed by human laws. For, even temporal emoluments, (leaving penalties out of the queſtion) annexed to the profeſſion of any

* 2 Cor. x. 4.

form

form of religion, in ſuch a degree as to excite mens avarice and ambition, and diſpoſe them to mean and unworthy, not to ſay wicked compliances to obtain or ſecure them, have done, I apprehend, infinite miſchief to the religious and moral characters of multitudes in all ages and countries.

But when ſuch national eſtabliſhments, beſides the rewards which they beſtow upon their church-officers, are guarded by temporal penalties, inflicted on all who cannot follow the lead of the publick wiſdom and public conſcience, they are then neither better nor worſe than notorious violations of the laws of Chriſt, and of his royal prerogative; they are deſtructive of the very deſign of his religion, which is of no value if the profeſſion and practice of it be not a free and reaſonable ſervice; and are an open invaſion of the common rights of humanity.

But perhaps you will ſay, I am leading you into "a theological controver-

"ſy

ſy *." I ſhall only refer it, therefore, to your further conſideration, whether the *law* cannot ſupport the church in all her *rights* and *immunities*, unleſs ſhe is inveſted likewiſe with the unwarrantable and dangerous power of *puniſhing* thoſe who call in queſtion, or diſſent from her eſtabliſhed formularies of doctrine or worſhip.

If you only mean, indeed, by the cenſures of the church, her refuſing communion to thoſe who differ from her in articles of faith which ſhe thinks important, without allowing her to inforce thoſe cenſures by any temporal penalties; I acknowledge, I have then miſunderſtood you. But I appeal to yourſelf, Sir, upon further reflection, whether that miſtake, if it be one, is not owing to your aſſigning no other limitation to the effects of thoſe cenſures, than that they ſhould not extend to "utter extermination and deſtruction."

* See Reply to Dr. Prieſtley, p. 4.

I free-

I freely confeſs, I am ſo far from thinking, that any church hath a right to uſe temporal penalties to bring perſons to her own terms of communion, that, I apprehend, ſhe is inveſted with no authority to make any terms of communion at all, which Chriſt hath not made; and thoſe which he hath made, are only to be enforced by ſpiritual ſanctions; by his own authority as head of the church, by the dread of his diſpleaſure, and by the hope of his favour. And a national church, I apprehend, will ſtand much firmer upon this noble and extenſive foundation of reaſon and ſcripture, than on the narrow and feeble one of human authority, fenced, as much as you pleaſe, with all the terrors of pains and penalties.

Perhaps it will be aſked, Are we to leave every man at liberty to propagate what ſentiments he pleaſes? It is my opinion, I profeſs, that truth is ſo far from ſuffering by free examination, that this is the

the only method in which ſhe can be effectually ſupported and propagated. But, with this idea I am not ſo happy as to be able to reconcile the following ſentiment: "I would not" you ſay "be underſtood to "derogate from the juſt rights of the national church, or to encourage a looſe "latitude of propagating any crude undi-"geſted ſentiments in religious matters: "of propagating, I ſay; for the bare en-"tertaining them ſeems hardly cogniſable "by any human authority *."

That indeed is very true; and a good reaſon there is for it, becauſe the heart of man is inſcrutable; becauſe there is a *natural impoſſibility* for any human authority to interfere with the inward ſentiments of the mind, while they are concealed from outward obſervation. But the moment they are declared, and reaſons are offered in ſupport or defence of them, human authority may interpoſe, it ſeems; becauſe it is

* Comment. vol. iv. p. 49.

"one of the juſt rights of the national "church, from which," you ſay, "you "will by no means derogate," to prevent "the propagation of any crude undigeſted "ſentiments in religious matters:" that is in reality, (for to this it amounts) any ſentiments different from thoſe by law eſtabliſhed; every eſtabliſhment ſuppoſing thoſe ſentiments to be crude and undigeſted, which are contrary to its own principles and practices. A maxim, which will vindicate the exerciſe of human authority in ſupport of every eſtabliſhment that ever was, or will be: Mohammediſm at Conſtantinople, Popery at Rome, Epiſcopacy in England, Preſbyterianiſm at Geneva, or in Scotland! For all the adherents to theſe ſeveral perſuaſions think, thoſe who differ from them entertain, at leaſt, *crude and undigeſted ſentiments in religious matters*. Indeed, this principle, purſued into its genuine conſequences, would have precluded the Reformation from Popery, and would even have ſtifled in its birth our holy

holy religion itſelf. If the propagation of truth, or of ſuppoſed truth, in matters purely religious, is to be reſtrained by human authority, (whether you call it civil or eccleſiaſtical, is the ſame at laſt; for they are both alike exerciſed by fallible men): in that caſe, the ſucceſs of true religion in the world, depends wholly on the power of the magiſtate, or on the majority; either of which may be as likely, at leaſt, to be on the ſide of error as of truth.

From this idea, that the ſuppreſſion of hereſy, or the preventing the propagation of it, by temporal penalties, is neceſſary to the eſtabliſhment of truth, or of a church, have been derived all thoſe execrable and outrageous perſecutions which have diſgraced not only our religion, but human nature itſelf. For there is a gradation, in this caſe, as natural as it is common; the ſame principle which induces men, at firſt, to employ what are called moderate penalties, in order to compaſs ſo good an end as the ſuppreſſion

of

of error, leading them (in caſe that end cannot *otherwiſe* be accompliſhed, that end which they think *muſt* be accompliſhed: the very ſame principle, I ſay, leading them) to meaſures ſtill more and more ſevere and intolerant, till by degrees they are reconciled to the moſt inhuman perſecutions, and bloody maſſacres. And in caſe they do not proceed to ſuch lengths, to what ſhall we aſcribe it? to their principle? or to their humanity pleading againſt principle?

I am far, Sir, from inſinuating, that you hold all the conſequences which flow from the maxim you ſeem to entertain, namely, that temporal penalties may be employed in promoting truth and ſuppreſſing error: it is ſufficient for me to obſerve, that all thoſe poſitions muſt be erroneous, from which ſuch conſequences naturally follow.——I am, Sir, *&c.*

LET-

LETTER III.

SIR,

THough the reaſoning in my laſt letter may be applied to the caſe of apoſtacy, as well as hereſy; the caſe of renouncing Chriſtianity, or profeſſing Deiſm; yet as you have advanced ſome particular arguments for inflicting human puniſhment upon infidels, I ſhall take the liberty to give what you have offered a diſtinct conſideration; becauſe, I apprehend, it would be diſhonourable to the Chriſtian religion to be even ſuſpected to owe its preſervation, not to its own excellence and evidence and the ſpecial protection of Providence, but to the terror of penal laws, and the ſword of the civil magiſtrate.

Having

Having premiſed, that "the loſs of life "is a heavier penalty than the crime of a-"poſtacy deſerves;" you remark, that, "about the cloſe of the laſt century, the "civil liberties to which we were then re-"ſtored being uſed as a cloke of maliciouſ-"neſs, and the moſt horrid doctrines ſub-"verſive of all religion being publickly a-"vowed both in diſcourſe and writings, it "was found neceſſary again," (the puniſh-ment of death for this crime being become obſolete) "for the civil power to inter-"poſe, by not admitting theſe miſcreants" (explained in the margin by *meſcroyantz*, the French word uſed in our ancient laws for unbelievers) "to the privileges of ſo-"ciety, who maintained ſuch principles as "deſtroyed all moral obligation. "To this "end," you ſay, "it was enacted by ſta-"tute 9 & 10 Will. III. c. 32. that if any "perſon educated in, or having made pro-"feſſion of, the Chriſtian religion, ſhall, "by writing, printing, teaching, or ad-"viſed ſpeaking, deny the Chriſtian reli-

" gion to be true, or the holy ſcriptures to " be of divine authority, he ſhall, for the " firſt offence, be rendered incapable to hold " any office or place of truſt; and, for the " ſecond, be rendered incapable of bringing " any action, being guardian, executor, " legatee, or purchaſer of lands, and ſhall " ſuffer three years impriſonment without " bail:" the ſame penalties, which have been already mentioned, as by this very ſtatue inflicted on Arianiſm.— And you had juſt before obſerved, that " all affronts " to Chriſtianity, or endeavours to depre- " ciate its efficacy, are highly deſerving of " human puniſhment *."

I have already ſhown, that principles or ſentiments relating to religion are not puniſhable by penal laws. The infliction of ſuch puniſhment, even when they are profeſſed, is out of the magiſtrate's province; as, when they are concealed, it is out of

* Comment. vol. iv. p. 44.

his

his power; for human laws have nothing to do with mere principles, but only with thoſe overt acts ariſing from them, which are contrary to the peace and good order of ſociety.

But it will be ſaid, Hath the magiſtrate no concern with thoſe principles which "deſtroy the foundation of moral obliga-"tion?" that is, if I underſtand you right, which have a *tendency* to introduce immorality and licentiouſneſs.

I allow, he may encourage, amongſt all ſects, thoſe general principles of religion and morality, on which the happineſs of ſociety depends. This he may, and ſhould do, as *conſervator* of the publick weal. But with regard to the belief or diſbelief of religious principles, or religious ſyſtems, if he preſumes to exerciſe his *authority* as a *judge*, in ſuch caſes, with a view of reſtraining and puniſhing thoſe who embrace and profeſs what he diſlikes, or diſlike and explode what he embraces, on account of the ſuppoſed ill tendency of their prin-

ciples, he goes beyond his province, which is confined to thoſe effects of ſuch principles, that is, to thoſe actions, which affect the peace and good order of ſociety; and every ſtep he takes, he is in danger of trampling on the rights of conſcience, and of invading the prerogative of the only arbiter of conſcience, to whom alone men are accountable for profeſſing, or not profeſſing, religious ſentiments and principles.

For, if the magiſtrate be poſſeſſed of a power to reſtrain and puniſh any principles relating to religion becauſe of their tendency, and he be the judge of that tendency; as he muſt be, if he be veſted with authority to puniſh on that account; religious liberty is entirely at an end; or, which is the ſame thing, is under the controul, and at the mercy of the magiſtrate, according as he ſhall think the tenets in queſtion affect the foundation of moral obligation, or are favourable or unfavourable to religion and morality. But, if the line be drawn

between

between mere religious principle and the tendency of it, on the one hand; and thoſe overt acts which affect the publick peace and order, on the other; and if the latter alone be aſſigned to the juriſdiction of the magiſtrate, as being guardian of the peace of ſociety in this world, and the former, as interfering only with a future world, be reſerved to a man's own conſcience, and to God, the only ſovereign Lord of conſcience; the boundaries between civil power and liberty, in religious matters, are clearly marked and determined; and the latter will not be wider or narrower, or juſt nothing at all, according to the magiſtrate's opinion of the good or bad tendency of principles.

If it be objected, that when the tendency of principles is unfavourable to the peace and good order of ſociety, as it may be, it is the magiſtrate's duty then, and for that reaſon, to reſtrain them by penal laws: I reply, that the tendency of principles, though it be *unfavourable*, is not *prejudicial*

to ſociety, till it iſſues in ſome *overt acts* againſt the publick peace and order; and when it does, *then* the magiſtrate's authority to puniſh commences; that is, he may puniſh the *overt acts*, but not the *tendency*, which is not actually hurtful; and, therefore, his penal laws ſhould be directed againſt *overt acts only*, which are detrimental to the peace and good order of ſociety, let them ſpring from what principle they will; and not againſt *principles*, or the *tendency* of principles.

The diſtinction between the tendency of principles, and the overt acts ariſing from them, is, and cannot but be, obſerved in many caſes of a *civil* nature; in order to determine the bounds of the magiſtrate's power, or at leaſt to limit the exerciſe of of it, in ſuch caſes. It would not be difficult to mention cuſtoms and manners, as well as principles, which have a tendency unfavourable to ſociety; and which, nevertheleſs, cannot be reſtrained by penal laws, except with the total deſtruction of

civil

civil liberty. And here, the magiſtrate muſt be contented with pointing his penal laws againſt the evil overt acts reſulting from them. In the ſame manner he ſhould act in regard to mens profeſſing, or rejecting, religious principles or ſyſtems. Puniſhing a man for the *tendency* of his principles, is puniſhing him *before* he is guilty, for fear he *ſhould be* guilty.

Beſides, if the magiſtrate in one country hath a right to puniſh thoſe who reject the religion which is there publickly profeſſed, the magiſtrates of all other countries muſt have the ſame right; and for the ſame reaſon, namely, to guard againſt the evil tendency of renouncing a religion, the maitenance of which they think of great importance to ſociety. If thoſe perſons who reject Chriſtianity are to be puniſhed in England, thoſe who embrace it are to be puniſhed in Turkey. This is the neceſſary conſequence of allowing any penal laws to be enacted, and to operate, in ſupport or ſuppreſſion of any religious ſyſtem;

for the magiſtrate muſt and will uſe his power according to his own religious perſuaſion.

If it be ſaid, that puniſhment is not to be inflicted on the mere entertaining, but only on the zealous propagating, of the principles of infidelity; it ſhould be conſidered, that the propagation of Chriſtianity would, on this maxim, be obſtructed, and even precluded, where a different religion already prevails, by making it the duty of the magiſtrate to oppoſe it, and puniſh thoſe who attempt it.

But having aſſerted, that "all affronts "to Chriſtianity, or endeavours to depre-"ciate its efficacy, are highly deſerving of "human puniſhment," or puniſhment from the magiſtrate, you endeavour to prove your poſition by the following obſervation: That "the belief of a future "ſtate of rewards and puniſhments, the "entertaining juſt ideas of the moral at-"tributes of the ſupreme Being, and a

"firm

" firm perſuaſion that he ſuperintends, and " will finally compenſate, every action in " human life, (all which are clearly re- " vealed in the doctrines, and forcibly in- " culcated by the precepts, of our Saviour " Chriſt) theſe are the grand foundation " of all judicial oaths, which call God to " witneſs the truth of thoſe facts which " perhaps may be only known to him and " the party atteſting. All moral evidence, " therefore, all confidence in human vera- " city," you ſay, " muſt be weakened by " irreligion, and overthrown by infide- " lity *."

If by infidelity you mean diſbelief of Chriſtianity, then it will be a fair inference from this laſt aſſertion, that there can be no human faith, no mutual confidence, no bond of ſociety, and no civil govern- ment, in countries which are not Chriſtian. But the fact is otherwiſe; and the reaſon is, becauſe there are ſome principles of re-

* Comment. vol. iv. p. 43, 44.

ligion

ligion and morality prevailing even in Mohammedan and heathen countries; and thoſe right principles, though greatly ſhort of a religious ſyſtem, and blended with many erroneous, abſurd, ſuperſtitious principles; yet, have ſufficient influence in general on the minds of thoſe who embrace them, to anſwer, tolerably at leaſt, the purpoſes of civil government, and of mutual confidence and commerce.

I admit, that, provided every one who revolts from Chriſtianity to Deiſm renounced, together with his former profeſſion, all thoſe principles of natural religion on which the obligation of judicial oaths is founded, (and poſſibly you underſtand infidelity in this extenſive ſenſe, when you ſpeak of its "overthrowing all human "confidence"): if, I ſay, he were known to have renounced theſe principles, your argument would be *ſo far* good, that his oath would deſerve no credit, and he would be ſubjected to innumerable inconveniencies and incapacities, which his being

ing deſtitute of the firm confidence of other men, and being diſcredited in his judicial oaths, would naturally and neceſſarily bring upon him: and indeed, ſuch an abſolute infidel as to all religion, natural as well as revealed, if proved to be ſo, ſhould not be admitted to take an oath in a court of judicature. But as for inflicting any *poſitive puniſhment* upon him, merely for rejecting right *principles*, or eſpouſing wrong ones, while this does not iſſue in thoſe *actions* which call for puniſhment; *that*, I think, for the reaſons already aſſigned, is beyond the province and juriſdiction of the magiſtrate.

In what I have juſt now ſaid, I have ſuppoſed theſe unbelievers of Chriſtianity to reject the great principles of natural as well as revealed religion; which, you rightly tell us, are the grand foundation of all judicial oaths. But the truth is, many who profeſs not to believe revelation, may poſſibly believe thoſe principles as firmly as ſome nominal Chriſtians, whoſe depoſitions

depoſitions on oath are not ſcrupled in courts of judicature. The belief of a God, the moral governor of the world, the ſearcher of hearts, the infallible judge, rewarder and puniſher of human actions, is, as you obſerve, the only foundation of a judicial oath; and if men *do believe* theſe articles, they ſhould not be made liable to that puniſhment, which, on your own ſtate of the caſe, is due only to thoſe who *do not* believe them; they ſhould not be puniſhed, I ſay, when they *do* believe them, merely becauſe they believe them upon reaſons independent of their "being "clearly revealed in the doctrines of "Chriſt;" for their believing them is all that your argument requires.

Indeed, we have a ceremony in adminiſtering a judicial oath, which ſuppoſes a belief of the Chriſtian religion. But that is by no means a neceſſary, eſſential part of a ſolemn judicial appeal to heaven; and can afford, therefore, no plea for puniſhing thoſe who do not believe Chriſtianity,

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as incapable of a judicial oath, (ſuppoſing that a proper reaſon for puniſhment); becauſe it is obvious, the end may be anſwered by an appeal to God in ſome other ſolemn form, without this ceremony; and our laws have ſet an example of it in the caſe of the Quakers.

If it be enquired, whether men ſhall be ſuffered with impunity to "*affront* Chriſtianity, and depreciate its efficacy," by reproaches and calumnies, offenſive to every Chriſtian; a different caſe from ſimply diſbelieving or modeſtly oppoſing it: I anſwer, that, provided it be unwarrantable to ſupport the belief of Chriſtianity, and to confute its oppoſers, by penal laws and the ſword of the magiſtrate, its profeſſors ſhould be exceeding tender how they animadvert, in this way, on the *manner* in which the oppoſition to it is made: a thing, comparatively, of little conſequence. For, though calumny and ſlander, when affecting our fellow-men, are puniſhable by

law; for this plain reaſon, becauſe an injury is done, and a damage ſuſtained, and a reparation therefore due to the injured party; yet, this reaſon cannot hold where God and the Redeemer are concerned; who can ſuſtain no injury from low malice and ſcurrilous invective, nor can any reparation be made to them by temporal penalties; for theſe can work no conviction or repentance in the mind of the offender; and if he continue impenitent and incorrigible, he will receive his condign puniſhment in the day of final retribution. Affronting Chriſtianity, therefore, does not come under the magiſtrate's cognizance, in this particular view, as it implies an offence againſt God and Chriſt.

If you ſay, that inſulting and reviling religion is very offenſive to good men, and ought, on that account, to be prohibited and puniſhed: I obſerve, ſo are all tranſgreſſions of the divine law, very offenſive to good men; but they are not, for that reaſon, all puniſhable by the magiſtrate.

In

In the caſe of groſs lying, heinous ingratitude, and many other vices which might be mentioned, though no one thinks of applying to a court of juſtice on the occaſion, yet every good man will treat theſe vices, and thoſe who are guilty of them, with juſt abhorrence and deteſtation. And the ſame, and no other, I apprehend, ſhould be their conduct, when infidels, with an offenſive indecency, vent their impotent rancour againſt the religion of Jeſus.

If you alledge, that this licentious manner of treating religion, will "depreciate its "efficacy" on the minds of men, eſpecially of the undiſcerning and thoughtleſs, which are commonly the major part: I anſwer, that the contempt and abuſe which infidels throw upon religion, will, in the end, entail diſgrace and infamy on themſelves. Their ribaldry and ſcurrility will be deſpicable and diſguſtful to the more ſenſible part of our ſpecies; and while there are Chriſtians, eſpecially Chriſtian miniſters,

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in the world, I truſt, there will always be proper perſons, who will expoſe to the moſt ignorant and unreflecting, the groſs folly and injuſtice of ſuch abuſe, and renthoſe who are guilty of it the objects of contempt to the loweſt of the people: whereas, if puniſhed by the magiſtrate, they would be the objects, probably, of their pity: a circumſtance which would procure their inſinuations and ſuggeſtions to the prejudice of religion a much more favourable reception, than they would otherwiſe be like to obtain.

Indeed, diſcovering a diſpoſition to take refuge in temporal penalties, whenever any perſons in diſcourſe or writings miſrepreſent and revile (or, as you ſtile it, *affront*) our holy religion, and depreciate its efficacy, is acting as if we apprehended the cauſe had no other and better ſupport. Whereas, for three hundred years after its firſt promulgation, Chriſtianity maintained its full reputation and influence, (though attacked in every way which wit or malice

lice could invent) not only without the aſſiſtance of, but in direct oppoſition to the civil power. It ſhone with the brighter luſtre, for the attempts to eclipſe it. And the inſults and calumnies of its enemies were as ineffectual to its prejudice, as either their objections, or, what were more to be feared, their perſecutions. And as it was during that period, ſo will it always be, if there be any ground to rely on that promiſe of our bleſſed Saviour concerning his church, that "the gates of "hell ſhall not prevail againſt it *."

In the mean time, compaſſion to all ignorant, petulant, malicious adverſaries of our holy religion; and a deſire to obviate the miſchief they do, by refuting their arguments, expoſing their petulance and malice, and if poſſible, working conviction in their minds; are the diſpoſitions which ſuch contemptible attacks on the honour of the Chriſtian religion, and its author, ſhould excite in his ge-

* Matth. xvi. 18.

nuine diſciples. We ſhould argue with ſuch men, not perſecute them; ſhould endeavour to reſcue others from the danger of being infected by their principles, with cool reaſoning; but we ſhould be careful how we attempt to puniſh them, leſt we *harden* inſtead of reclaiming them: leſt we leave room for others to imagine, that not their ſcoffs and inſults, but their *arguments*, have *provoked us* by being unanſwerable. And indeed, provided it be wrong to animadvert, by temporal penalties, on the calm reaſoning of infidels againſt Chriſtianity; it would, ſurely, be *imprudent* to puniſh them for what renders their arguments, if there be any, leſs formidable and prejudicial; I mean, their revilings and their ſcurrility. It is *imprudent*, I ſay, by a proſecution, to hold up to publick notice, to introduce into all converſation, and excite peoples curioſity after, thoſe ſcurrilous writings, which would otherwiſe quickly ſink with their authors into perpetual oblivion. Many infidels,

infidels, in modern times, have united their efforts againſt the Chriſtian religion; and they have railed, at leaſt ſome of them, much more than they have reaſoned; but they have been heard, and confuted; and moſt of them are only remembered by the excellent apologies for Chriſtianity, which they have been the occaſions of producing. I hardly think they and their works would have been ſo ſoon forgotten; I am ſure, our religion would not have received ſuch honour, nor infidelity ſuch diſgrace, and ſuch a total defeat, if, inſtead of being anſwered by the learned writers, who have employed their abilities to ſo laudable a purpoſe, they had been proſecuted, fined, impriſoned, or ſuffered any other ignominious or cruel puniſhment, by ſentence of the magiſtrate. Thoſe who call for the aid of the civil power, and for the infliction of pains and penalties, in ſupport of the Chriſtian religion, forget the character and conduct of its divine author; who, when his apoſtles, out of zeal

for his honour, would have invoked fire from heaven on the unbelieving Samaritans, becauſe they had juſt *affronted* him, ſeverely rebuked them: "Ye know not "what manner of ſpirit ye are of; the Son "of man came not to deſtroy mens lives, "but to ſave them *."

In what I have ſaid, let it not be ſuppoſed, that I have pleaded the cauſe of infidelity. No; I have pleaded that of Chriſtianity, in my own opinion at leaſt; the mild and forbearing ſpirit of which religion, I deſire more and more to imbibe, to regard all its doctrines and precepts as the rule of my faith and manners, its promiſes as the foundation of my hopes, and the ſcheme of redemption through Jeſus Chriſt as my higheſt conſolation and joy. It is, indeed, from my reverence for it, and attachment to it, and zeal for its true dignity and honour, that I will ever vindicate it from the *leaſt ſuſpicion* of being a

* Luke ix. 55, 56.

perſecuting

perſecuting religion *: A ſuſpicion, which, if it were juſt, would be a greater brand of ignominy, and do it more real diſcredit, than all the invidious miſrepreſentations and calumnies of its adverſaries. And this

* Several writers of the firſt rank amongſt thoſe who have appeared in defence of Chriſtianity, have declared openly, and argued ſtrongly, againſt the perſecution of infidels: particularly Dr. Lardner, in his preface to his excellent "Vindication of three miracles of our Saviour "againſt Woolſton;" and in two "Letters to the Biſhop of "Chicheſter," publiſhed in the late "Memoirs of his "life:" Dr. Chandler, in his preface to the "Conduct "of the modern deiſts:" and Mr. Simon Brown, in his preface to a very ſhrewd and ſenſible pamphlet againſt Woolſton, which he ſtiles "A fit rebuke to a ludicrous in-"fidel." The performances of theſe writers ſhew, that they perfectly *underſtood* the ſtrength of their cauſe; and their averſion to the interpoſition of the civil power, that they altogether *relied* upon it, having no apprehenſions of the conſequences of a free debate, managed in any way the patrons of infidelity ſhould think proper. Indeed, no one ever made the attack in a more rude and ſcurrilous manner than Woolſton: they, however, contented themſelves with confuting his arguments and expoſing his ſcurrility, entering their proteſt, with convincing reaſons, againſt the proſecution of him. And this conduct I cannot help thinking very much to the honour of the Chriſtian religion and its advocates.

it becomes thoſe ſeriouſly to conſider, who would wipe away the diſhonour done it, by methods that would double the diſgrace, not only on themſelves, but on the noble cauſe which they profeſs to eſpouſe.

——I am, Sir, *&c.*

LET-

LETTER IV.

SIR,

WHEN you mention the ſtatute 1 Eliz. c. 2. which enacts, that "if "any perſon whatſoever ſhall, in plays, "ſongs, or other open words, ſpeak any "thing in derogation, depraving, or de-"ſpiſing of the common prayer, he ſhall "forfeit for the firſt offence an hundred "marks, for the ſecond offence four hun-"dred, and for the third offence ſhall for-"feit all his goods and chattels, and ſuf-"fer impriſonment for life:" I ſay, when you ſpeak of this ſtatute, you not only approve of it in the peculiar circumſtances of the time when it was firſt enacted; but you ſay, that "the continuance of it to

" the preſent time cannot be thought too " ſevere or intolerant*." And the reaſon you aſſign is, that " no one in the preſent " circumſtances can do this," that is, " re- " vile" the liturgy (the crime to which alone you ſuppoſe the act to refer) " from " any laudable motive, not even from a " miſtaken zeal for reformation; it being, " ſince the union, extremely unadviſable " to make any alterations in the eſtabliſhed " church †."

Now, ſuppoſing that a man cannot have any " laudable motive for reviling and in- " veighing with bitterneſs againſt the com- " mon prayer," (for againſt this only, I ſay, you underſtand the act to be levelled): ſuppoſing it to be a thing very culpable; yet, what is the ſpecific nature of the crime, and wherein doth the malignity of it conſiſt? " It is a crime," you ſay, " of " a groſſer nature than mere nonconfor-

* Comment. vol. iv. p. 50, 51.

† This argument againſt alterations, taken from the union, will be conſidered particularly in a ſubſequent letter.

" mity: becauſe it carries with it the ut-
" moſt indecency, arrogance, and ingrati-
" tude: indecency, by ſetting up private
" judgment in oppoſition to public; arro-
" gance, by treating with contempt and
" rudeneſs what hath at leaſt a better
" chance to be right, than the ſingular no-
" tions of any particular man; and ingra-
" titude, by denying that indulgence and
" liberty of conſcience to the members of
" the national church, which the retainers
" to every petty conventicle * enjoy †."

This crime of reviling the liturgy, I perceive, is a very complicated one; " it car-
" ries with it," you ſay, " the utmoſt in-
" decency, arrogance, and ingratitude."
For each of which you aſſign a particular

* Dr. Prieſtley hath remarked a want of elegance and politeneſs in this expreſſion, unworthy of a fine writer, (Remarks, p. 52, 53.): I would obſerve an impropriety in it, unbecoming the great lawyer. The word conventicle, if I underſtand it right, means an unlawful aſſembly; and is therefore improperly applied, as it is here, to the legal aſſemblies of Proteſtant Diſſenters.

† Comment. vol. iv. p. 50.

reaſon;

reaſon; and I ſhall examine them all in their order.

That reviling any thing, that treating with rudeneſs and contempt any man, much more a conſiderable body of men, or the publick at large, or thoſe religious forms which are uſed under the ſanction of authority, and by many revered, is *indecent*, will be readily allowed. The rules of civility and good manners ought always to be obſerved; eſpecially where the publick, and perſons in authority, are concerned. Never to violate them, if poſſible, is in itſelf right; and is alſo good policy; for any cauſe, inſtead of being diſſerved, will be recommended and promoted, by being defended with civility and good temper.

But I cannot help ſuſpecting, Sir, that your view reaches further than this; if this be all you mean, I do not conceive why the indecency of reviling the liturgy is, particularly, ſaid to ariſe from "ſet-"ting up private judgment in oppoſition

"to

" to publick :" I ſay, your putting the indecency of it on this footing, appears to me to be accounted for only by ſuppoſing, that you think it wrong to oppoſe private to publick judgment, in any caſe; and then nonconformity and reviling the liturgy are both indecent; for the ſame reaſon, becauſe they are an oppoſition of the private to the public judgment; only one is more ſo than the other, and conſequently more indecent. And I the rather apprehend I am herein not very wide of your ſentiment, becauſe you do conſider nonconformity as a crime, though not ſo great as that of reviling the liturgy; and you ſo conſider it, I imagine, on this particular account, as it is private judgment oppoſed to the publick.

And indeed, if it be a general maxim, that it is *indecent* to " ſet up private judg- " ment in oppoſition to publick ;" then it is certainly ſo, to diſſent from publick or eſtabliſhed opinions and practices: then all thoſe who have been the authors of any refor-

reformations or improvements, in religion, in philoſophy*, in policy, and in the manners and conduct of life, contrary to the publick ſtandard, have been guilty of indecency.

Beſides, it is worth obſervation, that the publick judgment, to which it is expected

* The *publick judgment* of the church of Rome hath condemned for hereſy the doctrine of the motion of the earth according to the ſyſtem of Copernicus; notwithſtanding which it hath long paſſed for orthodoxy in the *private judgment* of all philoſophers. The famous Galileo, having taught this point, and confirmed it by new diſcoveries, was impriſoned in the Inquiſition on that account, obliged to recant and curſe his former opinion, and ſwear that he would not teach it any more; but that if he ſhould know of any ſuch heretic, or any perſon ſuſpected of ſuch hereſy, he would immediately report him to the holy office. Such a fatal operation had this *publick judgment* formerly, in a point of *philoſophy*, capable of demonſtration, and now univerſally received. And the influence of it, though it be privately rejected by every individual, appears in the publick *profeſſion* of philoſophers even in modern times. Two learned Jeſuits and able mathematicians, publiſhing an edition of Sir Iſaac Newton's Principia, with an excellent Commentary, in which his principles are explained and more fully demonſtrated, (the *monitum* or advertiſement to the third book of which is dated at Rome 1742), thought it neceſſary, for their ſafety I ſuppoſe, before they entered upon the

pected ſuch deference ſhould be paid, amounts to no more than the vote of thoſe who happen to be inveſted with power, at the time ſuch eſtabliſhments are made; which is ſometimes very different from the opinion or judgment of the publick at *that time*, and frequently differs widely from the judgment of the publick in a *ſubſequent period*. But the unhappineſs is,

the heretical doctrine De ſyſtemate mundi, to make, in form, the following curious declaration; than which, however it was deſigned, there never ſurely was a greater burleſque upon ſervile ſubmiſſion to publick judgment.

P. P. Le Seur & Jacquier declaratio.

Newtonus, in hoc tertio libro, telluris motæ hypotheſim aſſumit. Autoris propoſitiones aliter explicari non poterant, niſi eâdem quoque factâ hypotheſi. Hinc alienam coacti ſumus gerere perſonam. Cæterum latis à ſummis Pontificibus contra telluris motum decretis obſequi profitemur.

The declaration of the fathers Le Seur and Jacquier.

Newton, in this third book, aſſumes the hypotheſis of the earth's motion. The author's propoſitions could not be explained, if we did not alſo go upon the ſame hypotheſis. Upon this account we have been obliged to appear under a feigned character. We profeſs, however, to follow the decrees iſſued by the ſovereign Pontiffs againſt the motion of the earth.

that,

that, when the thing eſtabliſhed, be it what it will, hath received the ſanction of publick authority, neither numbers, nor the reſpectable characters of thoſe who diſapprove it, can eaſily procure a reform; and even when it is in a manner grown out of all credit, ſo as to be eſpouſed by very few, it ſtill paſſes under the denomination of "the publick judgment," againſt which it is "indecency to oppoſe the private judgment" of individuals *.

But ſince a man's private judgment *may happen* to be in the right, and the publick one in the wrong; whenever this is found, or generally agreed, to be the caſe, he muſt make but an aukward figure who gravely reprimands thoſe that ſet up the former againſt the latter. I ſhould think it, therefore, much better to come to the

* If the Athanaſian creed, with its damnatory clauſes, were now a candidate for admiſſion into the publick formulary, it would doubtleſs be rejected by a very large majority, both of clergy and laity; and yet it remains one of thoſe things which are authoriſed by the *publick judgment*.

queſtion

queſtion at once: Is the thing in deliberation right or wrong? for the opinion, neither of men in power, nor of the majority, is the teſt of truth, or the rule of our faith or practice.

So that the particular reaſon on which you ground the "indecency of reviling the "liturgy," namely, that it is "ſetting up "private judgment in oppoſition to pu-"blick," appears to me to be very inadequate and unſatisfactory.

The next article in the compoſition of this crime, namely, reviling the common prayer, is, you ſay, "arrogance." It is "arrogant to treat with rudeneſs and con-"tempt what hath a better chance to be "right, than the ſingular notions of any "particular man."

In uſing the phraſe, "the ſingular no-"tions of a particular man," you put the caſe very favourably for drawing your own concluſion. To be ſure, if a man adopts ſentiments which never entered into any

body's head but his own, or which no one will embrace when propoſed, the odds are againſt him. But this is not often the caſe; and is not ſo, in particular, with regard to the debate between the church and the Diſſenters, the point here in queſtion. However, he who treats the notions of others with a rude contempt, does, I think, in moſt caſes, appear to affect a ſort of ſuperiority, (call it arrogance, or inſolence, if you pleaſe), which uſually ill becomes him who aſſumes it, and is never very agreeable to thoſe who are the objects of it.

But with relation to the query, Who have the faireſt chance of being in the right? thoſe who follow the lead of a publick eſtabliſhment? or thoſe who are, or profeſs to be, impartial enquirers after truth? that, I think, is not ſo clear, at leaſt on one ſide of the queſtion, as you ſeem to imagine.—Moſt eſtabliſhments, even thoſe which have been ſettled by authority of the civil power, have originated

ginated from the clergy; at leaſt, with reſpect to their formularies of doctrine and worſhip; and the magiſtrate hath had little more to do in the affair, than to eſtabliſh what hath been already prepared to his hands. Let us, then, look into eccleſiaſtical hiſtory, and ſee what the councils, ſynods, convocations, and other general, national, or provincial aſſemblies of the clergy, have, for the moſt part, been, from the firſt famous and revered council of Nice, down to the laſt ſeſſion of our own convocation in England. When I reflect on the policy and artifice uſed in the management of ſuch aſſemblies; on their obſequiouſneſs to the caprices of princes, and miniſters of ſtate, or of potent eccleſiaſtics, and even of ſome of their own ambitious and turbulent members; on their prejudices and paſſions, their private and party views, their ſcandalous animoſities and contentions; on the ſmall majorities by which queſtions of importance, intended to bind not only the men of

that age but their poſterity, have been determined *; on the reſpectable characters which have often appeared in the minor number †; and above all, on their ſelf-contra-

* The croſs in baptiſm, and kneeling at the communion, (which are impoſed in the church of England as neceſſary to the adminiſtration of theſe ordinances) as well as the obſervation of ſaints days, and a few other ceremonies, were carried in the convocation of Elizabeth 1562 by a ſingle proxy. The majority of thoſe preſent, *againſt* them, was 43 againſt 35; but upon adding the proxies, the majority, *for* them, was 59 againſt 58. Thus they obtained the honour of the *publick judgment* by this *better chance of being in the right*; and the contrary opinion was degraded into *private judgment*, though hardly ſo as to become the *ſingular notion of a particular man*. Strype's Annals, vol. i. p. 337,—339. edit. 3. Burnet's Hiſtory of the Reformation, vol. iii. No. 74. among the Records, p. 662,—664. edit. 1753.

† King William, in the firſt year of his reign, granted a commiſſion to prepare alterations of the liturgy and canons, and propoſals for the reformation of the eccleſiaſtical courts. In this commiſſion, beſides ſeveral others, there were ſuch men as Tillotſon, Stillingfleet, Burnet, Patrick, Tenniſon, Lloyde, Sharp, Kidder, Scot, Fowler. And they accordingly made very conſiderable alterations and improvements in the liturgy; which are highly commended by Dr. Nichols, in his *Defenſio Eccleſiæ Anglicanæ*, p. 94, to 97. and which Mr. Neal, in his *Hiſtory of the Puritans*, ſaith,

contradictions, and their mutual cenſures and anathemas *: I ſay, when I conſider theſe things, I own, they ſomewhat abate my reverence for the determinations of ſuch bodies,

faith, would, if they had been adopted, have brought in three parts in four of the Diſſenters, vol. ii. p. 804. edit. 4to. And this author was a good judge, ſince no one better underſtood their principles and diſpoſitions. However, the convocation, when the matter was laid before them by a meſſage from the crown, reſolved to enter into no debates about alterations, would return no anſwer to that part of the King's meſſage, and could hardly be brought to thank him for his promiſe of protection. Burnet's Hiſtory of his own Times, under the year 1689. In what a contemptible light does that majority in convocation appear, who would not ſo much as *hear* what was prepared for their conſideration by *ſuch celebrated divines*, the glory of the Engliſh church, acting under a royal commiſſion! and who would not eſteem it an honour to be found in ſuch a minority! and yet their ſentiments, outvoted by furious bigots, are now only *private judgment!*

* A few remarks upon the four firſt general councils, will be a ſufficient illuſtration of what is here ſaid. The council of Nice, we are told, conſiſted of more than 300 biſhops, "brought together, ſome by the hope of gain, and others "to ſee ſuch a miracle of an emperor as Conſtantine;" who accordingly well rewarded them "by his preſents as well as "his entertainments." Euſeb. in vit. Conſt. l. 3. c. 6. & 16. Sozom. l. 1. c. 25. p. 42. Theodorit. l. 1. c. 11. p. 36.

bodies, and for the eſtabliſhments founded by them, or by the civil power in conſequence of their reſolves; and I am apt to ſurmiſe, that a candid enquirer after truth would

Sabinus ſaith, that "they were weak and illiterate men," (vid. Socrat. l. 1. c. 8. p. 21. & c. 9. p. 31.); which might be true with regard to many of them. However, it is certain, all hiſtory agreeing in it, that they were in general (πολλοι, πλειονες are the words of Socrates and Sozomen) very litigious and contentious; inſomuch that the emperor was obliged to interpoſe, to take them off from their private quarrels, and from their daily cuſtom of preſenting to him accuſations againſt one another, before he could get them to attend to the buſineſs for which they were called together, (Euſeb. de vit. Conſtant. l. 3. c. 13. Socrat. l. 1. c 8. p. 20. Sozom. l. 1. c. 17. p. 35. Theodorit. l. 1. c. 11. p. 37. Gelaſius Cyzic. l. 2. c. 8.); and when they did engage in it, their conduct was agreeable to their character; for the party accuſed having laid before them a written confeſſion of their faith, they immediately tore it in pieces; and a great tumult ariſing, and thoſe who preſented the paper, being cried out upon as betrayers of the faith, were ſo terrified, that they all aroſe, except two, and were the firſt in condemning the ſentiments and party they before eſpouſed, Theodorit, l. 1. c. 7. p. 27. With ſuch violence were matters carried in the council! And the unintelligible terms which they introduced into their creeds and definitions of faith, and impoſed by dint of authority upon others, only ſerved to increaſe and perpetuate the controverſies then ſubſiſting, and fill the world with mutual rage and

would eſteem it a much fairer chance for being in the right, to follow his own judgment, or, if any other, the judgment of a few ſerious, impartial, diſintereſted enquirers,

and mutual perſecutions. "The conſequence of which "was, that the Chriſtian religion, which, for 300 years "after the aſcenſion of Jeſus, had been ſpreading over a "large part of Aſia, Europe, and Africa, without the aſ-"ſiſtance of ſecular power and church-authority, and at the "convening of the council of Nice, was almoſt every where "through thoſe countries in a flouriſhing condition, in the "ſpace of another 300 years, or a little more, was great-"ly corrupted in a large part of that extent, its glory deba-"ſed, and its light almoſt extinguiſhed." Dr. Lardner's Credibil. vol. 8. p. 24. This council, we are informed by Socrates, l. 1. c. 11. p. 38, 39. by Sozomen, l. 1. c. 23. p. 41. and by Nicephorus Calliſtus, l. 8. c. 19. tom. 1. p. 571. was on the point of decreeing the celibacy of the clergy, if they had not been diverted from it by a ſpirited oration of Paphnutius, an Egyptian biſhop; and perhaps by perceiving, that it was diſagreeable to the emperor; as it probably was, if we may judge by the marks of ſingular reſpect which he ſhewed that biſhop. Socrat. l. 1. c. 11. p. 38.

The next general council of Conſtantinople was called to confirm the deciſions of the council of Nice, which had not in the leaſt extinguiſhed the rage of controverſy. Previous to it, the emperor wrote to the inhabitants of that city, that he "would have all his ſubjects be of the ſame reli-"gion, which Peter, prince of the apoſtles, had from the "beginning delivered to the Romans, and which was now

quirers, like himſelf, than to adopt the reſolutions of the moſt venerable ſynod, in which truth and right are decided by the major vote. I would not be thought to

" held by Damaſus, biſhop of Rome, and Peter, biſhop of " Alexandria." Sozom. l. 7. c. 4. So reſpectable a father as Gregory Nazianzen, in a letter which he wrote to Procopius to excuſe himſelf with the emperor from attending this council, ſaith, that he was " deſirous of avoiding all ſy- " nods, becauſe he had never ſeen a good effect, or happy " concluſion of any one of them ; that they rather increaſed " than leſſened the evils they were deſigned to prevent. " For the love of contention, and luſt of power, were there " manifeſted in inſtances innumerable." Operum, tom. 1. p. 814. epiſt. 55. edit. Paris 1630. And what the good father ſaid concerning former councils, not excepting the famous one of Nice, he found afterwards to be true of this council of Conſtantinople. " Theſe conveyers of the Holy " Ghoſt," ſaith he, " theſe preachers of peace to all men, " grow ſo bitterly outrageous and clamorous againſt one " another in the midſt of the church, bandying into par- " ties, mutually accuſing each other, leaping about as if " they had been mad, under the furious impulſe of a luſt " of power and dominion, as if they would have rent the " whole world in pieces." He ſaith afterwards, that " this " was not the effect of piety, but of a contention for " thrones :" ουκ ευσεβειας—την δ' υπερ θρονων εριν. And he gives a ſtrange account of their indecent behaviour, when he had juſt made a ſpeech to them. " Theſe furious " young men were followed by the elder," ſaith he, " and

to be an advocate for an arrogant, insolent, pragmatical contempt of the opinions of others; what I mean is, that were I to be under direction in the pursuit of truth, I had

" and ruled the council." Greg. Naz. de vit. sua, operum tom. 2. p. 25, 27.

The general council of Ephesus was called on this occasion. Nestorius was of opinion, that the two natures in Christ were not so united after the incarnation, as to occasion a mutual communication of properties. He therefore objected to calling the Virgin Mary, Θεοτοκος, the mother of God; and would have her called, Χριστοτοκος, the mother of Christ. Socrat. l. 7. c. 32. Concil. tom. 1. p. 1280. edit. Harduin. The design of the council of Ephesus was, to settle this notable dispute; or rather, to condemn Nestorius. When they met, Cyril of Alexandria, the avowed enemy of Nestorius, induced the bishops present, of his own party, to proceed with great precipitance and violence to the condemnation of Nestorius, before the arrival of John bishop of Antioch, and the bishops who were with him; and that, in opposition to the protest of 60 or 70 bishops, and of the emperor's commissioner, whom they drove out of the assembly. Concil. tom. 1. p. 1351,—1354. And then they sent an account of what they had done, inscribed, " To Nestorius, a second Judas." Concil. tom. 1. p. 1434. When John and his party arrived, they deposed Cyril; Concil. tom. 1. p. 1450,—1455. and Cyril and his party, in return, deposed John; Concil. tom. 1. p. 1500. Evagr. l. 1. c. 5. p. 254, 255. And thus there subsisted two councils, mutually condemning each other. To allay the storm,

had rather follow (next to the divine bleſſing on my own ſincere enquiries) the judgment and guidance of ſome wiſe and good men, that I have known, than the publick

the ſtorm, the emperor gave his ſanction to the depoſition of Neſtorius, Cyril, and Memnon an active partizan of Cyril's, (Concil. tom. 1. p. 1550. E. 1551. A, E. 1555. A.) and they were arreſted by the emperor's commiſſioner, p. 1555,—1557. But he was afterwards brought (ſome ſay, by the money diſtributed amongſt his courtiers by the deputies of Cyril, (p. 1580 C.) to alter his mind; to confirm, indeed, the depoſition of Neſtorius, whom he baniſhed, (p 1670. A, B.); but to reſtore Cyril and Memnon. Ever ſince Cyril and his party have been eſteemed the legitimate council of Epheſus. Iſidorus of Peluſiota, in a letter to Cyril, treats him very juſtly as well as very freely, when he repreſents his conduct in this council to be that of a man purſuing only his own reſentments, Epiſtol. l. 1. epiſt. 310. operum edit. Paris 1638.

The fourth general council of Chalcedon was occaſioned by the extraordinary tranſactions of a ſecond council of Epheſus, of which Dioſcorus, biſhop of Alexandria, was preſident; and in which the doctrine of the two natures in Chriſt after the incarnation was condemned, and the contrary doctrine of Eutyches affirmed. The menaces of the preſident, together with the ſoldiers and monks, who ſurrounded the council, terrified the whole aſſembly. Concil. tom. 2. p. 213. C, D. and Flavianus, biſhop of Conſtantinople, who had condemned Eutyches, being accuſed by the preſident, and declared to be anathematized and depoſed;

and

publick deciſions of any or all the councils ſince the days of the apoſtles.

The third article which you exhibit againſt

and appealing therefore from him, and ſome biſhops at the ſame time interpoſing in his behalf; the preſident ſtarted up, and ſternly called for the emperor's commiſſioners, by whoſe command the proconſul of Aſia came in with the military, and a confuſed mob with chains and clubs and ſwords. Concil. tom. 2. p. 216. and ſome biſhops not willing to declare, and others flying away, he cried out, "If "any one refuſes to ſign, with me he hath to contend," (tom. 2. p. 213. B.) and then he and another biſhop carried about a blank paper, (Concil. tom. 2. p. 80. E. p. 94 D, E. p. 101. E. Evagr. l. 2. c. 4. p. 288.) and obliged them all to ſign it. After which it was filled up with the charge of hereſy againſt Flavianus, and the ſentence of his depoſition. Flavianus ſtill excepting againſt the preſident, he and others fell furiouſly upon him, beating him barbarouſly, throwing him down, kicking and trampling upon him, inſomuch that three days after he died of the bruiſes he had received in the council. Liberat. Breviar. c. 12. Niceph. Calliſt. l. 14. c. 47. tom. 2. p. 550. edit. Paris 1630.

The general council of Chalcedon, I ſay, was called upon occaſion of the tranſactions and deciſions of this ſecond council of Epheſus; and after ſome ſtruggle between the two contending parties, for and againſt Dioſcorus; ſome crying out for the condemnation and baniſhment of the heretic,

gainſt reviling the liturgy, is, that it involves in it "ingratitude, by denying indulgence and liberty of conſcience to "the members of the national church." There

retic, for Chriſt had depoſed him; and others, for his reſtoration to the council, to the churches; (Concil. tom. 2. p. 310. B.) the party againſt him prevailed, and he was depoſed. (tom. 2. p. 377.) and the doctrine of the two natures, which had been condemned before, was now affirmed; the fathers crying out, "We believe as Pope Leo doth, "anathema to the dividers and confounders; we believe "as Cyril did; thus the orthodox believe, curſed be every "one who doth not believe ſo too." Concil. tom. 2. p. 305. E.

On this brief ſurvey of theſe four general councils, will the reader believe, that they are by law joined with the ſcriptures, as judges of hereſy, and as guides of that "*publick judgment*, which hath a better chance to be right "than the ſingular notions, or private judgment, of any "particular man?" Yet ſo it is.

It may, perhaps, by ſome perſons, be eſteemed an act of prudence to conceal the enormities of ſuch famous aſſemblies of Chriſtian biſhops, leſt the honour of Chriſtianity ſhould ſuffer by expoſing them. But, I confeſs, I cannot be of this opinion. Chriſtianity can never ſuffer, in the judgment of any impartial perſon, by the conduct of thoſe turbulent and factious men, who have figured on the publick theatre in ſupport of *political* religion; while it hath numberleſs advocates in every age, who, by their example as well as influence, promote the intereſt of *perſonal* religion; exhibiting the faireſt

patterns

There would be little room, ſurely, Sir, to complain of violations of liberty of conſcience, if, in contending for their reſpective dogmas, men never went beyond contemning and ridiculing one another: for, however cenſurable this may be, it certainly is not denying them liberty of conſcience: that always implies reſtraint or

patterns of meekneſs, humility, contempt of the world, patience, contentment, purity and ſpirituality, univerſal benevolence and charity, as well as the moſt undiſſembled and fervent piety. Such men of ſterling worth, ſuch genuine Chriſtians, who paſs through the world, like a gentle current, which fertilizes the whole adjacent country, appear with no eclat in hiſtory; the good effects of their virtues being diffuſed in ſilence; while the reſtleſs and ambitious, who aim at wealth and power and pre-eminence, and bear down all before them, like reſiſtleſs torrents, which deſolate whole regions, attract obſervation for the changes they produce in the world, and the materials they furniſh for the pen of the civil or eccleſiaſtical hiſtorian. Nevertheleſs, thoſe good and righteous men, who have ſerved their generation, in their particular ſtations, by their private virtues, will be hereafter had in everlaſting remembrance; when thoſe who have ſtood forth to the publick as the champions of tyranny or ſecular Chriſtianity, will be covered with ſhame and everlaſting contempt.

com-

compulſion, ideas very different from contempt and ridicule.

But perhaps, reviling the liturgy may be cenſured, as ungrateful, on account of the toleration indulged to Diſſenters. It is not, however, to the church the Diſſenters are peculiarly indebted for this bleſſing *. For though her governors promiſed them every mark of Chriſtian temper and brotherly affection, when her fears of Popery ran high in the reign of James the Second; yet, as ſoon as the ſtorm ſubſided, theſe promiſes were, in great meaſure, for-

* The author of the Alliance between the Church and State, in his Poſtſcript in anſwer to Ld Bolingbroke, p. 2, 3. ſpeaking both of the teſt-act and of the toleration, obſerves, that "this "reform of the Engliſh conſtitution happened not to be the "good work of the church, begun in the conviction of truth, "and carried on upon the principles of charity; but was "rather owing to the vigilance of the ſtate, at one time, "vainly perhaps, anxious for the eſtabliſhed religion, "(Char. II.) at another, wiſely provident for the ſupport "of civil liberty." (Will. III.) The author is certainly right with reſpect to the toleration: it was entirely the work of the ſtate. King William engaged in it heartily; partly, no doubt, to ſtrengthen the intereſt of civil liberty, of which the

forgotten. It is to that great prince, King William, to whom the Britiſh conſtitution and liberties owe their preſervation and ſecurity; and to thoſe renowned patriots who firſt engaged, and then ſupported him, in the glorious enterprize; it is to theſe, and ſuch as theſe, the Diſſenters are, under God, alone obliged for their deliverance from unjuſt violence and oppreſſion, and for being reſtored, in part, to their natural rights by the toleration. I ſay, to their natural rights: for religious liberty is one of thoſe rights to which men are entitled by nature; as much ſo, as to their lives and properties; and it ſhould be remembered, therefore, that the Diſſenters

the Diſſenters were to a man zealous friends; and partly, from a regard to religious liberty, of which he had all his life ſhewn himſelf a firm and ſteady patron. The teſt was not the work of Charles the Second: it was puſhed on in oppoſition to the court by the patriots of thoſe times, in order to ſecure the civil as well as the eccleſiaſtical conſtitution from the machinations of the Papiſts, by excluding them from publick offices; and the royal aſſent to it was procured by the Commons ſtopping the bill of ſupply till it was paſſed.

cannot

cannot be juſtly reckoned to be any more obliged to thoſe who *kindly* do not again deprive them of it, than they are to thoſe who, *as kindly*, do not ſeize on their eſtates, or take away their lives: an obligation which, I ſuppoſe, hath never been eſteemed a reaſon for any *peculiar gratitude*.

And now, Sir, notwithſtanding the exceptions which I have taken to your premiſes, I will leave you in full poſſeſſion of your concluſion: I will ſuppoſe, that the crime of reviling the liturgy is a complication of "indecency, arrogance, and in-"gratitude:" and I will add, moreover, that it may poſſibly imply, (and, I think, it is the principal thing that can be implied in it, though you have not at all mentioned it), great malignity and inveteracy againſt the church. But, ſurely, to confiſcate a man's goods, and impriſon him for life, for any degree of any of theſe evil diſpoſitions towards the church, when diſcovered

covered only by words, (though it be frequently, and they be ever ſo open and explicit,) and not by any injurious and dangerous overt acts, muſt be conſidered, one would think, by perſons of humanity, and doubtleſs, therefore, by you, Sir, upon further reflection, to be ſomewhat *too ſevere and intolerant*. Notwithſtanding all the bitterneſs with which the puritans inveighed againſt the offices of the church, (and which they did not do, till by oppreſſion they were provoked almoſt to madneſs,) the paſſing this act, in my opinion, diſcovered a very intolerant ſpirit in thoſe who, at that time, had the conduct of publick affairs.

But perhaps it may be ſaid, that this meaſure was adopted only out of prudence, for the ſecurity of the national eſtabliſhment. You inform us, that " the terror " of theſe laws (for, you ſay, they ſeldom " or never were fully executed) proved a " principal means, under providence, of

" preſerving the purity as well as decency " of our national worſhip *." Which, give me leave to ſay, Sir, is paſſing no great compliment upon the national worſhip.

But however that be: what had the church to fear from the revilings of the puritans, that ſhe muſt fence herſelf around with human terrors? We are to ſuppoſe, ſhe had all the truth and argument, as well as the encouragement of the civil magiſtrate, on her ſide. In this caſe, having recourſe to human terrors was bringing diſgrace on a good cauſe, and doing credit to a bad one. For the preſumption, in moſt mens minds, is always in favour of the cauſe which is oppreſſed and perſecuted; and that this is the caſe, is owing, partly to a certain generoſity in mankind, which inclines them to ſide with the weakeſt, and thoſe who are ill treated; and partly to a perſuaſion, which appears not

* Comment. vol. iv. p. 51.

wholly unreaſonable, that while argument can be maintained, terror will not be employed. And for my own part, I am perſuaded, that the church, inſtead of inſuring its ſafety by theſe methods, greatly increaſed the number of its enemies, and inflamed their animoſity and inveteracy. Had the governors of the church or ſtate, at that time, made a few conceſſions, ſuch as not only the puritans, but many wiſe and great men in the church, deſired; or, in caſe they had not thought proper to do this, if they had indulged and tolerated thoſe puritans, who could not in conſcience conform, it is my opinion, the church would have been in no more danger from the puritans of that age, than it is now in from the Diſſenters of this. Such ſevere laws occaſioned the very crime they were intended to prevent; for they imbittered mens ſpirits, and inflamed their paſſions: and when the mind is greatly irritated, it is hardly in human nature to ſpeak with temper and moderation, either of thoſe by

whom, or of that for which, men feel themſelves ill-treated and oppreſſed.

I would further obſerve, (and it is an obſervation I would ſubmit to the conſideration of a gentleman of your profeſſion, in particular) that, on ſuppoſition this act was levelled only, as you ſeem to imagine, againſt the bitter reproaches and inſults of the puritans, it ſeems to have been drawn with too great a latitude of expreſſion. I believe you will admit, and, I think, you have ſomewhere ſaid ſomething like it, that it is the excellence of any law to define offences and puniſhments with the utmoſt preciſion, that the ſubject may know diſtinctly what is lawful and what is forbidden. But is this the caſe with the act before us, ſuppoſing it to be deſigned merely againſt reviling and outraging the offices of the church? For, what is the preciſe idea of one who ſpeaks, in open words, in derogation of the common prayer? Surely, under an expreſſion of ſuch

ſuch latitude may be included every man, who openly declares his diſapprobation of any part of it; that is, every one who gives his reaſons for not joining in the offices of the church; and he may, by a willing judge and jury, nay, ought, according to the literal ſenſe of the words, to be convicted upon this ſtatute. Now, ſuppoſing this law was intended only, as you ſeem to think, againſt inſulting and reviling the liturgy; can ſo good a lawyer as Dr. Blackſtone approve of a ſtatute, which is ſo worded as to comprehend perſons who are entirely innocent of the crime intended?

But in truth, I cannot help thinking, that it was the actual intention of thoſe who promoted this act, to put an effectual ſtop, if poſſible, to the puritans *arguments* as well as their revilings; and that, on this account, the act was ſo expreſſed, as to include every man who finds fault with the common prayer, though only in a way of argument. For certainly, that is "in

" open words ſpeaking in derogation of it." The intent of the act at that time, I am afraid, was, to prevent the queſtioning any part of the ſervice of the church, either in a way of reaſoning or reviling.

Before Dr. Blackſtone, therefore, had declared his approbation of this ſtatute, and much more of the continuance of it to the preſent time, he ſhould have conſidered, what perſons and what caſes, according to its literal and juſt conſtruction, and perhaps according to its original intention, may be affected by it; and whether he would chuſe to vindicate it in its full extent. In every view it appears to me very ſurpriſing, that you, Sir, who have expreſſed yourſelf, on various occaſions, with ſo much liberality of ſentiment, ſhould think " the continuance of this act not too " ſevere and intolerant."

After ſuch a declaration, I cannot be much ſurpriſed at your paſſing this encomium on the reign of Elizabeth, notwith-

withſtanding it produced ſuch ſevere laws againſt nonconformity, that "the refor-" mation was then finally eſtabliſhed with " temper and decency, unſullied with par-" ty-rancour, or perſonal caprice and re-" ſentment *." An impartial review of the eccleſiaſtical hiſtory of thoſe times, as it is exhibited by Fuller, Strype, and other credible hiſtorians of the church of England, is, I think, ſufficient to convince us, that there was, in that reign, a great deal of ill temper, party-rancour, and perſonal picque and reſentment in the governors of the church, which entered much more than it ſhould have done into their deliberations and conduct concerning eccleſiaſtical affairs. The Queen, it is true, at the entrance of her reign, diſcovered great policy and caution, in the meaſures ſhe employed to take down the fabrick of Popery, which her ſiſter Queen Mary had re-edified. Nevertheleſs, through the

* Comment. vol. iv. p. 48.

whole courſe of it, there were few demonſtrations of temper and moderation in her, or in thoſe governors of the church whom ſhe principally eſteemed and preferred; whereas there were many proofs and examples of unjuſt and cruel ſeverity, towards thoſe Proteſtants who diſliked the leaſt article in her eccleſiaſtical ſettlement, or who expreſſed, though in ever ſo humble and modeſt a manner, their deſire of a further reformation. The truth is, ſhe had entertained ſuch lofty conceptions of her ſpiritual as well as temporal prerogative, and was diſpoſed to maintain it, upon all occaſions, with ſuch rigour, as cannot be eaſily reconciled with any juſt notions of religious liberty, or with any regard to the ſacred and inviolable rights of conſcience.—I am, Sir, *&c.*

LETTER V.

SIR,

THE attempts to procure a further reformation in the church have been many and various. But while I enjoy my liberty as a Chriſtian, and a Proteſtant Diſſenter, I am not ſolicitous, on my own account, whether any alterations are made in the conſtitution or liturgy of the church of England. I deſpair of ever ſeeing the terms of conformity ſo enlarged and liberal, as to invite me into the eſtabliſhment. But when I conſider, that there are perſons already in the communion, and even in the orders of the church, who deſire, and endeavour to obtain, a reformation of various particulars which they, as well as

Proteſtant Diſſenters, think ought to be reformed; I am ſorry, on their account, and for the intereſt of religion in general, whenever I ſee difficulties thrown in the way of a deſign ſo laudable, and ſo deſirable. In this view, it was with no ſmall concern, that I obſerved you laying ſo much ſtreſs on the following ſentiment: That "an alte-"ration in the conſtitution or liturgy of "the church of England, would be an in-"fringement of the fundamental and eſ-"ſential conditions of the union between "England and Scotland, and would great-"ly endanger that union *."

I will firſt make ſome remarks upon this queſtion, according to your ſtate of it; and then explain the particular view in which, I think, it ought to be conſider-ed.

I obſerve that you allow, that, notwith-ſtanding the act of union, and the condi-tions therein enacted, there is "a compe-

* Comment. vol. i. p. 98.

tent

"tent authority in the Britiſh parliament "for making ſuch alterations in the "church *." And if ſo, whether the parliament ſhould venture to exerciſe that power, is merely a queſtion of prudence and expedience. You declare your opinion, that "it will endanger the union." With ſubmiſſion, I cannot conceive, there could be any great danger in a parliamentary review and alteration of ſuch things as it would be agreeable to the members of the church of England themſelves ſhould be altered; and eſpecially if it be apparent to the whole world, that the deſign takes its riſe in the church of England itſelf. The Scots would then have no reaſon to be alarmed; and I hardly think they would be ſo; becauſe the caſe here ſuppoſed, is no precedent for any alterations in their church, except what they themſelves ſhall deſire. Could we ſuppoſe, indeed, an attempt made of alterations in the church of England, at a time when the Scots had

* See alſo Reply to Dr. Prieſtley, p. 20, 24.

reaſon

reaſon to apprehend a deſign, formed in England, to make alterations in the church of Scotland; and that alterations here were only made to furniſh a kind of precedent for carrying that deſign into execution; they might, and probably would, be alarmed. But I cannot ſee, for my part, any dangerous conſequences in the parliament's making what are generally conſidered to be real improvements (even tho' it ſhould not be thought abſolutely neceſſary to make them*) in either church, provided it be done only in conformity with the general ſentiments and deſire of the reſpective churches themſelves. We ſee, in fact, that the paſſing the patronage-act, in reſpect to the church of Scotland, was attended with no ſuch formidable conſe-

* See Comment. vol. iv. p. 51. where the author ſaith, "It would now" (ſince the union) "be extremely unadviſable to make any alterations in the ſervice of the church; unleſs it could be ſhewn, that ſome manifeſt impiety or ſhocking abſurdity would follow from continuing it in its preſent form."

quences

quences as you ſeem to apprehend; though it was an infringement of the union, the more dangerous, becauſe that act was paſſed under the influence of Queen Anne's laſt miniſtry, in oppoſition to the general ſentiments of the Scottiſh nation.

In what I have ſaid, I have left all conſideration of the intention of the act of ſecurity of the church of England, included in the act of union between the two nations, entirely out of the queſtion. But after all, permit me to aſk, Whether it was not the ſpirit and deſign of theſe acts of ſecurity in both churches, to prevent the incroachments of one upon the other, after the union took effect? It muſt certainly be admitted, that an apprehenſion of ſuch incroachments upon each other, was the *occaſion* of thoſe acts; for if it had not been for the dangers apprehended by each church from the other, thoſe acts of ſecurity of the two churches had never been paſſed at all: and from the *occaſion* we may infer the *deſign*.

Beſides,

Beſides, if no alteration muſt be made in either of the two churches, becauſe the act of union hath ſettled things immutably in each; then the act of union amounts to a declaration of the legiſlature, that they would, and their poſterity ſhould, always think and act exactly as they did at that time: which, as Dr. Prieſtley obſerves, in his letter to you, publiſhed in the St. James's Chronicle of October 10. 1769, is ſo abſurd, that one would not willingly impute it to two ſuch auguſt aſſemblies as the parliaments of both kingdoms.

But there is another view in which this point may be conſidered, independently of any enquiry, what was the deſign of the two parliaments, or the two nations, at the time when the act of union was enacted; and which, I think, is the true one: and it is this:

I believe it will be admitted, that, in all *pacta conventa*, or union treaties, thoſe conditions which are previouſly inſiſted

upon by either of the contracting parties in its own favour, and in which the intereſt of the other is not involved, though they are ratified in ever ſo ſolemn a manner, are nevertheleſs alterable, with the free conſent of that party who is alone intereſted therein. This is perfectly conſonant to reaſon, and to the nature of ſuch ſolemn pactions. Indeed, no conditions can be made ſo unalterable, that they cannot be reverſed in the caſe which is here ſuppoſed; that is, where the only party intereſted in the condition, and who inſiſted upon it for his own behoof, releaſes the obligation, and conſents to have it altered. And if this principle be allowed, the propriety of the application of it to the preſent caſe will appear, if we conſider, that the union between England and Scotland, though an incorporating union in many, was not ſo in all reſpects; and particularly that in their eccleſiaſtical capacities, or with regard to their reſpective churches, the two nations, who were the original contracting parties, ſtill continue

ſeparate

ſeparate bodies: I ſay, the two nations were the original contracting parties; for this ſhould be carefully obſerved, that, ſtrictly ſpeaking, the two parliaments were not the contracting parties, but the two nations; for whom, and on whoſe behoof, the parliaments were only agents, or plenipotentiaries, executing an expreſs or implied truſt. And if ſo, either of the two churches, or nations, may authoriſe an alteration of any condition ſtipulated merely in its own favour, and in which the other hath no intereſt; that is, the Engliſh or the Scottiſh nation or church, may recede from the condition demanded and enacted in its own favour, even though moſt ſolemnly declared to be immutable. And on this footing, I mean, on the free conſent of the party intereſted therein, the parliament of Great Britain may make the alterations in queſtion.

Indeed, you tell us, that, "without "diſſolving the union, you do not ſee how "the ſenſe of either nation could now be "ſepa-

"ſeparately taken;" (that is) "how the "Scots Peers or Commoners could be pre-"vented from voting either for or againſt "the repeal of the acts of uniformity, in "caſe it were moved in either houſe *." And I admit, that as the two parliaments are now ſunk into the one parliament of Great Britain, the ſenſe of the two nations cannot be ſeparately taken in parliament. But if the ſenſe of the two churches, or nations, in their ſeparate eccleſiaſtical capacity, may be known, that will be a ſufficient foundation for the parliament to proceed upon. For inſtance, if any alterations were requeſted of the parliament by the generality of either of the two churches or nations; or if, upon a motion in parliament for ſuch alterations, and ſuch motion being ſufficiently known, they were not in a reaſonable time petitioned againſt by any conſiderable number, the parliament might preſume a general conſent,

* Reply to Dr. Prieſtley, p. 17.

and

and muſt form their judgment of this from the notoriety of the fact.

And this is the footing upon which, I think, the caſe ſhould be put; and not merely upon a competent authority in the Britiſh parliament to make alterations in the two churches. And I am of this opinion, becauſe the parliament of Great Britain is to be conſidered as *guardian*, or *in truſt*, for both churches; and therefore cannot have any *authority*, that is, *right*, inherent in itſelf (for *nemo poteſt, quod non jure poteſt*) to diſpenſe with the conditions of the union, which were previouſly declared to be unalterable, *in thoſe particular reſpects in which the two nations ſtill continue ſeparate bodies*; here, I think, nothing but the conſent, expreſſed or implied, of each of theſe bodies, as to the condition ſtipulated in its own favour, can be ſufficient warrant for an alteration.

Let this be illuſtrated by the caſe of the diſſidents in Poland: Can it be thought, that there was an authority in the Poliſh diet

diet to vacate the ſolemn *pacta conventa*, and the rights and privileges of the diſſidents grounded upon them? I apprehend, the diſſidents diſallow, and proteſt againſt, ſuch right or authority in the diet; and, I think, with reaſon; but they would have no ſuch reaſon to complain of any infraction of the original ſettlement, if no alterations had been made but at their own requeſt, or with their own free conſent.

On the whole, this ſtate of the queſtion appears to me to be the only one that is conſiſtent with the general nature of government as a truſt *, with the ſacred regard

* Nothing is more certain, than that government, in the general nature of it, is a truſt in behalf of the people. And there cannot be a maxim, in my opinion, more ill-grounded, than that there muſt be an *abſolute* or *arbitrary power* lodged ſomewhere in every government. If this were true, the different kinds of government in the world would be more alike, and upon a level, than they are generally ſuppoſed to be. In our own government in particular, though no one thinks with more reſpect of the powers, which the conſtitution hath veſted in every branch of the legiſlature; yet I muſt be excuſed in ſaying, what is ſtrictly true, that the whole legiſlature is ſo far from having an *abſolute power*, that it hath not *any power*, in ſeveral caſes that

gard due to ſuch *pacta conventa* as the act of union, and with the rights thereby reſerved to each of the two churches; and, on thoſe accounts, to be much preferable to acknowledging, on the one hand, a power in the parliament to diſpenſe with ſuch ſolemn conditions, when, and as far as, *they* ſhall think there is ſufficient ground for it; or to holding, on the other hand, ſuch conditions to be unalterable, whatever change of circumſtances may render an alteration, in the general opinion, expedient and neceſſary.

might be mentioned. For inſtance, their authority does not extend to making the houſe of Commons perpetual, or giving that houſe a power to fill up their own vacancies; the houſe of Commons being the repreſentatives of all the Commons of England, and in that capacity only a branch of the legiſlature; and if they concur in deſtroying the foundation on which they themſelves ſtand; if they annihilate the rights of their conſtituents, and claim a ſhare in the legiſlature upon any other footing, than that upon which the conſtitution hath given it to them; they ſubvert the very truſt under which alone they act, and thereby forfeit all their authority. In ſhort, they cannot diſpenſe with any of thoſe eſſential rights of the people, reſpecting their liberties, properties, or lives, the preſervation of which ought to be the great object of government in general, as it is of our conſtitution in particular.

In

In ſhort, this argument, drawn from the immutability of the church in conſequence of the act of union between the two nations, ſeems to me to be an uſeful engine to be played off by thoſe who are averſe to any alterations; but, I believe, (I ſpeak only in general), would not have much ſtreſs laid upon it by thoſe who are inclined to them.

However, if it be ſo, that the act of union renders every tittle and iota of the church conſtitution and liturgy immutable, this conſideration furniſhes the ſtrongeſt argument for *their* ſeparating entirely from the church, who are diſſatisfied with the preſent ſtate of things in it; inaſmuch as this invariable ſettlement precludes all hope of future amendment.

In your anſwer to Dr. Prieſtley you ſay, you "have neither leiſure, inclination, nor "ability to dip yourſelf in theological con-"troverſy*." Will you ſuffer me to remind

* Reply to Dr. Prieſtley, p. 4.

you, Sir, that, if this be the caſe, you ſhould not have *decided* a theological controverſy, on which volumes have been written, in ſo ſummary a manner as you have done, when you ſay, "That many "Diſſenters divide from the church upon "matters of indifference, or in other "words, upon no reaſon at all *."

To judge of the propriety and truth of this aſſertion, I firſt obſerve, that it is not agreed on both ſides, that the things in queſtion are indifferent. And, I think, whoever reads the Diſſenting Gentleman's letters to Mr. White, and conſiders his objections to the preſent terms of conformity, muſt at leaſt admit, that a great deal may be advanced to prove, that the things in debate are not indifferent, but ſuch as very judicious as well as conſcientious perſons may reaſonably ſcruple to comply with. However, even ſuppoſing them to be indifferent, I obſerve,

* Comment. vol. iv. p. 52.

That

That the authority, by which they are injoined and made neceſſary to the inſtitutions of Chriſt, and to a participation of Chriſtian ordinances, may be reaſonably called in queſtion. The twentieth article of the church of England aſſerts, indeed, "that the church hath power to decree "rites and ceremonies, and hath authority "in matters of faith." But this the Diſſenters muſt be allowed to controvert. They aſſert, that Chriſt alone hath this authority; that no power can make that neceſſary, which he hath not made neceſſary; and that what is indifferent in its own *nature*, ought to be left indifferent in *practice*, and ſhould not be bound upon Chriſt's ſubjects either by civil or eccleſiaſtical laws; neither of which can, in this caſe, be of any validity, as being both alike of human origin.

That "all things ſhould be done de-"cently and in order *," they admit; and

* 1 Cor. xiv. 40.

in the ſenſe of the apoſtle Paul, they aſſert with as much zeal as any other perſons. But they think, there is a manifeſt difference between circumſtances of natural decency and order, which are neceſſary to be agreed upon and obſerved, in order to the performance of any divine worſhip at all; and ſuch rites and ceremonies, ſuch additions to divine inſtitutions, as are not at all neceſſary, in the reaſon of the thing, or by any law of Chriſt; but only injoined by a human, that is, in this caſe, incompetent authority. "A power in the church "to decree rites and ceremonies, and au- "thority in matters of faith," is a principle ſo extenſive in its influence, that, under the ſhadow of it, have grown up all the enormous innovations and ſuperſtitions of the church of Rome *: And if Diſſenters

* The following obſervations of Dr. Prieſtley, upon this head, in his View of the principles and conduct of the Proteſtant Diſſenters, p. 59. are very ſenſible. "It ſhould "be conſidered," ſaith he, "that a *power of decreeing "rites and ceremonies*, is a power abſolutely indefinite, and "of

ters ſhould diſcover any averſion to giving countenance to ſuch a principle, and its genuine conſequences, excuſe me, Sir, if I think, they are more than pardonable in

" of the very ſame kind with thoſe claims, which, in " things of a civil nature, always give the greateſt alarm. " A tax of a penny is a trifle; but a power of impoſing " that tax is never conſidered as a trifle, becauſe it may im- " ply abſolute ſervitude in all who ſubmit to it. In like " manner, the enjoining of the poſture of kneeling at the " Lord's Supper is not a thing worth diſputing about in " itſelf, but the authority of enjoining it *is*; becauſe it is, " in fact, a power of making the Chriſtian religion as bur- " denſome as the Jewiſh, and a power that hath actually " been carried to that length in the church of Rome. Nor " do we ſee any conſiſtence in the church of England re- " jecting the authority of Rome in theſe things, and impo- " ſing her own upon us."—

Again, p. 66. " Our anceſtors, the old puritans, had " the ſame merit in oppoſing the impoſition of the ſurplice, " that Hampden had in oppoſing the levying of ſhip-mo- " ney. In neither caſe was it the thing itſelf they objected " to, ſo much as the authority that enjoined it, and the " danger of the precedent. And it appears to us, that the " man who is as tenacious of his *religious* as he is of his " *civil liberty*, will oppoſe them both with equal firmneſs.

" All the difference, then, in the conduct of men who " equally value their liberty, will be in the *time* and *manner* " of oppoſing theſe incroachments upon it. The man of a " ſtrong and enlarged mind will always oppoſe theſe things

in ſo doing, and ſhould not have been repreſented as acting upon no reaſon at all.—I am, Sir, &c.

" in the beginning, when only the reſiſtance can have any " effect; but the weak, the timid, and ſhort-ſighted, will " attempt nothing till the chains are rivetted, and reſiſt- " ance is too late. In civil matters, the former will make " his ſtand at the levying of the firſt penny by *improper autho-* " *rity*; and in matters of religion, at the firſt, though the " moſt trifling ceremony, that is, without reaſon, made " neceſſary; whereas the latter will wait till the load, in " both caſes, is become too heavy to be either ſupported " or thrown off." And by theſe reaſons he ſupports his remark, p. 58. that " the oppoſition made by the firſt " nonconformiſts to the injunction of a few ceremonies, " was an argument of great *ſtrength of mind*; and that they " acted upon more juſt and enlarged views of things, than " thoſe who ſuperciliouſly affect to ſtigmatize them as men " of *weak minds*." Whether the puritans underſtood the principles of liberty ſo thoroughly, and acted upon ſuch enlarged views of things, as they are here repreſented to have done, I will not pretend to ſay. Of this, however, I am very certain, that all theſe obſervations are true and juſt as applied to the modern Diſſenters.

LETTER VI.

SIR,

I Obſerve in your Commentaries a very remarkable paſſage, which aſſerts the abſolute neceſſity of excluding all Diſſenters from civil offices, as a thing *eſſential* to the *very idea* of a national eſtabliſhment. —You ſay, "He," (that is, the magiſtrate) "is bound to protect the eſtabliſhed church, by admitting none but its genuine members to offices of truſt and emolument: for if every ſect was to be indulged in a free communion of civil employments, the idea of a national eſtabliſhment would at once be deſtroyed, and the Epiſcopal church would be

"no longer the church of England*." That is extraordinary indeed! Some have talked of the ſecurity which may ariſe to the church from this excluſive privilege; and you intimate it yourſelf, when you ſay, it is the magiſtrate's duty to *protect* the church by this method. Others have inſiſted upon I know not what kind of alliance or contract, in which this excluſive privilege was ſtipulated for the church. But that the church would loſe her *exiſtence* and *eſſence* without it, ſeems to be very ſtrange. What! cannot the church be eſtabliſhed in the poſſeſſion and enjoyment of her own peculiar temporalities, her tythes, prebends, canonries, archdeaconries, deanries, and biſhopricks by law, unleſs ſhe engroſs all civil as well as eccleſiaſtical offices to herſelf? Can there be no legal eſtabliſhment of, and no legal and national proviſion made for, a *church*, unleſs all the offices and emoluments of the *ſtate* are annexed to it? Was there no

* Comment. vol. iv. p. 53.

national

national church properly eſtabliſhed by law in England till the teſt-act was enacted, which appropriated all civil offices to perſons of her communion, in the reign of Charles the Second? and is there none now in Scotland, where civil offices are not confined to the Preſbyterians, who have been hitherto ſuppoſed to be the eccleſiaſtical eſtabliſhment in that country? Is there, I ſay, no ſuch eſtabliſhment in Scotland? is the very idea of it deſtroyed, and the Preſbyterian church no longer the eſtabliſhed church of that part of the united kingdom? I apprehend, this will hardly be affirmed; and if ſo, an excluſive right to civil offices cannot be eſſential to the very idea of a church-eſtabliſhment.

Indeed, I would not willingly ſuppoſe any thing ſo unjuſt can be eſſential to an eccleſiaſtical eſtabliſhment. For certainly good ſubjects, if they are by law deprived of the capacity of ſerving their king and country, in thoſe offices for which they

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are qualified, and which poſſibly they might otherwiſe obtain, are injured by ſuch excluſion. I do not ſay, that the actual poſſeſſion of civil offices is the right of any ſubject; but a capacity of being elected or appointed to them, is the right of every good ſubject; and being deprived of that capacity is plainly an injury; and every injury done a man merely for his religion, and not on a civil account, is, in my opinion, a degree of perſecution: I know no other definition of perſecution, than that it is an injury inflicted on a perſon for his religious principles or profeſſion only.

A teſt-law, appropriating all civil offices to the members of the church, hath been vindicated, even on ſuppoſition of its being contrary to the law of nature, by inſtances of municipal laws, made, in direct oppoſition to the law of nature, for the publick good *. But in ſuch caſes, the advantage

* See the Biſhop of Glouceſter's Alliance between Church and State, p. 320. edit. 4.

to

to the publick ought to be very apparent, and of conſiderable moment; and even then, is rather to be conſidered as an *excuſe* for ſuch deviations from the law of nature, or general principles of equity, in the preſent imperfect ſtate of ſociety, than as a full and abſolute *juſtification* of them. However, ſhould an excluſion of good ſubjects from civil offices on a religious account appear, upon examination, not to be at all for the publick good, then the very foundation of this defence (ſuch as it is) of an excluſive teſt is entirely deſtroyed. The queſtion therefore is, What is that publick good ariſing from a teſt-law, and the excluſion of good ſubjects from civil offices, which overbalances the right that every ſuch ſubject hath, on principles of reaſon and equity, to a capacity of being appointed to ſuch offices?

Upon the moſt general view of this point, it cannot appear to be for the good of the *magiſtrate*, or the *ſtate*, to be deprived of the power of availing itſelf of

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the ſervices of any good ſubjects. It is, ſurely, for the advantage of the ſtate, that none ſhould be rendered incapable of civil employments, but thoſe whoſe affections or principles render them ſuſpected to the civil government; that is, who do not give proper teſtimony of their being good ſubjects: for the more numerous the perſons are who are capable of ſuch appointments, the greater is the probability of a proper choice, provided thoſe who make it diſcharge their duty to the publick with fidelity and judgment.

It may be alledged, perhaps, that the magiſtrate hath wiſely conſented to grant the church this excluſive privilege, in order to obtain the *greater good* of the ſpecial ſervices of the church, in inforcing the duties of imperfect obligation, ſuch as gratitude, hoſpitality, generoſity, &c. which human laws cannot effectually inforce; and of an alliance with her, and a right by grant from the church to a ſupremacy over

her, and to the power of appointing her miniſters and officers.

With regard to the ſervice which the church does the ſtate, by inforcing the duties of imperfect obligation, and by which ſhe is ſuppoſed to merit, in part, her excluſive privilege to civil offices; I obſerve, that if this be a reaſon for allowing capacity of civil employments to good ſubjects of any one religious perſuaſion, it is a valid reaſon for extending it to good ſubjects of all religious perſuaſions; and in particular, to the Proteſtant Diſſenters. For, in their religious aſſemblies, theſe virtues are inculcated, perhaps with as good effect, and with as much utility to ſociety, as amongſt Chriſtians of any other denomination. Upon this ſtate of the caſe, therefore, no ſufficient cauſe can be aſſigned, why they ſhould be excluded from a reaſonable and proportionable ſhare of the favour of the ſtate.

As for the church's giving up her independence and ſupremacy, and the appoint-

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ment of her officers or miniſters, to the ſtate; it may be proper to enquire, to what this condeſcenſion, on the part of the church, may be ſuppoſed to amount. And here it ſhould be remarked, that the ſtate hath a right to a ſupremacy over all perſons, whether clergy or laity, of every religious perſuaſion, within her dominions; a right, founded in the nature of civil government, independent of any grant from the church; and in this ſenſe, the church could confer upon the ſtate no ſupremacy which it had not before; it could not give it any new ſubjects, or increaſe its civil power.

The meaning, therefore, of this grant of ſupremacy muſt be, that the church admitted the ſtate to a ſupremacy in cauſes eccleſiaſtical, and to the appointment of her church-officers; in lieu of which ſhe claims an excluſive right to the poſſeſſion of civil offices. And theſe, it is ſaid, are the terms of the grand alliance between the church and ſtate, upon which is grounded

grounded the equity of a teſt-law, excluding all from the poſſeſſion of civil offices, except the members of the eſtabliſhed church. But it doth not appear, that any ſuch terms were ever concerted and agreed between the church and the ſtate; it appears, on the contrary, that no ſuch *can be* ſuppoſed or *implied*, on any fair and equitable principles. For, all the peculiar temporalities of the church being ſolely the grant of the ſtate, and her particular form and conſtitution being eſtabliſhed by its laws, the government of the church of courſe belonged to that authority which formed and endowed it; and when the ſtate appoints the miniſters and officers of the church, ſhe doth it upon this footing, that the proviſion made for their ſupport is her donation and eſtabliſhment. Now, on this ground, the ſtate was in undiſputed poſſeſſion of all the power of church-government, and of the appointment of church-officers, which ſhe at preſent enjoys, before any teſt was appointed, or

nonconformiſts were by law excluded from civil offices. This excluſive right, therefore, now claimed by the church, to the offices of the ſtate, could be no part, no term, no condition of the ſuppoſed *original* treaty of alliance between the church and ſtate. The claim is entirely *novel*; it is an uſurpation upon the ſtate, an attempt to introduce a new term or condition into the original contract, which ought therefore to be rejected as inadmiſſible.

If it be ſaid, that the church hath purchaſed this excluſion of Proteſtant Diſſenters from civil offices, by conſenting to a toleration of their religious profeſſion and worſhip; I obſerve, that this free enjoyment of their religious liberty was a natural right, of which they were never deprived but with manifeſt injuſtice; and the granting of their religious liberty, therefore, or the repairing of one act of injuſtice, can never be conſidered as a ſufficient reaſon, or tolerable excuſe, for a violation of their

civil rights; that is, committing another act of injuſtice.

If it be further alledged, that the church's excluſive enjoyment of civil offices comes in as a balance to the toleration, as an acceſſion of ſtrength to the church; in order to counterpoiſe the danger which might accrue to her, were Diſſenters admitted to a free enjoyment of civil offices: * (whereas her ſecurity before the toleration

* Thus argues the author of The Alliance, &c. p. 296, 297. and gives himſelf the credit of being of the ſame ſentiments with King William, whom he ſtiles, perhaps juſtly, the beſt and greateſt of our monarchs; applauding his equal conduct in his different ſtations of Prince of Orange and King of England: which conduct he thus repreſents. "When King James, a *Papiſt*, demanded of his ſon-in-"law, with whom he was then on good terms, his appro-"bation of a *toleration* and *abolition of the teſt*, the Statholder readily concurred with the ſcheme of a *toleration*, but "utterly condemned an *abolition of the teſt*. When afterwards he became King of a free people, the *Proteſtant* "Diſſenters, likewiſe, in their turn, demanded both. "His conduct was uniformly the ſame. He gave them a "*toleration*, but would not conſent to *aboliſh the teſt*." The only fault I find with this account is, that it is not *hiſtory*, but *fable*. The fact is, that when King James aſked the Prince's approbation of the abolition of the teſt, he meant,

tion conſiſted in this, that every man, whether in or out of office, was by law conſidered as a member of the church, and indiſpenſably obliged to conformity:) I ſay,

and the Prince underſtood him to mean, a repeal of it as to the *Papiſts*, as well as the Proteſtant Diſſenters; and it was with reſpect to the former the Prince refuſed his approbation. When afterwards he became King of England, he was ſo far from refuſing the *Proteſtant Diſſenters* the repeal of the teſt as to *them*, that he had the deſign very much at heart; he ſignified it in council, and, in a ſpeech on the occaſion, earneſtly recommended it to his parliament, that, while he "doubted not they would ſufficiently provide a-"gainſt Papiſts," they would "leave room for the admiſ-"ſion of all Proteſtants that were willing and able to ſerve:" adding, "This conjunction in my ſervice will tend to the "better uniting you amongſt yourſelves, and the ſtrength-"ening you againſt your common adverſaries." And accordingly, when a clauſe for repealing the teſt as to Proteſtant Diſſenters, which was inſerted in the bill for ſettling the oaths, was rejected; the King, being reſolved to purſue his deſign, procured another clauſe to be propoſed to be inſerted in the ſame bill, in order to qualify all perſons for places, who, within a year before or after their admiſſion into them, had received the ſacrament, either according to the uſage of the church of England, or *in any other Proteſtant congregation:* which clauſe was alſo rejected, notwithſtanding the influence of the court in its favour. See Tindal's Continuation of Rapin, vol. 1. p. 120,—123. edit. 8vo. 1758. The conduct of the Prince and the King was

ſay, ſhould this be alledged, it will come under conſideration, when we examine the nature of the *ſecurity* which the *church* derives from an excluſive teſt.

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was equal and conſiſtent; but, as we have ſeen, totally different from the ideas of this author.

It ſhould be obſerved, that the original deſign of the teſt was, not to exclude the Proteſtant Diſſenters, but the Papiſts. It was brought in by the patriots in the reign of Charles the Second, under their apprehenſions of Popery and a Popiſh ſucceſſor; and when, during the debate in the Houſe of Commons, it was obſerved, that it was drawn in ſuch a manner as to comprehend the Proteſtant Diſſenters, the court-party endeavoured to avail themſelves of that circumſtance in order to defeat the bill. But the diſſenting members diſappointed them, by declaring, that they had rather confide in the juſtice and generoſity of parliament to paſs ſome future bill in their favour, than be the occaſion of retarding or defeating the ſecurity, which the preſent bill was calculated to afford to the liberties of their country. And this genuine patriotiſm produced ſoon afterwards a bill for their relief from the penal laws; but the parliament was prorogued, through the reſentment of the court, to prevent its paſſing. And when, notwithſtanding this, a bill in favour of the Diſſenters did afterwards paſs both houſes, and lay ready for the royal aſſent, the court ventured upon a very extraordinary expedient: the clerk of the crown was ordered to convey away the bill; and, accordingly, it was never afterwards to be found. The continuance of the teſt-act, therefore, to the preſent time, and

For, if this plea of publick good, as the baſis of an excluſive teſt, does not relate to the good of the ſtate, perhaps it may to the good of the church.

And

the excluſion of Diſſenters from all publick offices, is the reward they enjoy for their generous and diſintereſted patriotiſm.

Indeed, this particular teſt, receiving the ſacrament according to the rites of the church of England, as it was deſigned, ſo it was calculated, to exclude the Papiſts, rather than the Proteſtant Diſſenters; for the former, it was apprehended, would not comply with the eſtabliſhed church in this office above all others; and to increaſe the difficulty on their part, they were expreſsly required, beſides the oaths of allegiance and ſupremacy, to renounce tranſubſtantiation: whereas it was, at that very time, no uncommon thing for Proteſtant Diſſenters, to receive the ſacrament occaſionally in the church of England, in order to expreſs their charity towards it as a part of the church of Chriſt. This was the caſe with Mr. Baxter, Dr. Bates, and others of their leading clergymen, as well as many of their laity. Indeed, after the teſt was enacted, many of theſe altogether abſtained from this practice; becauſe they would not act upon a ſuſpicious motive, and becauſe they totally diſapproved the uſe of a religious ordinance as a civil teſt. But this conſequence of appointing the ſacrament as a teſt, was not likely to be foreſeen at the time the act was enacted. And therefore, I think, we may on the whole infer with reaſon, that it was not particularly levelled againſt the Proteſtant Diſſenters. If it had been the deſign

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And, doubtleſs, it is for *her good*, in one ſenſe; namely, for her *emolument*, that her members only ſhould enjoy civil offices. But, provided this claim does not appear to be *juſt* as well as profitable, it would be an ill compliment to the church to ſuppoſe her capable of continuing and maintaining it. And where, indeed, *is the equity* of her demanding, beſides that ample proviſion which is made for her ſupport by law, and to which the whole nation contributes, an excluſion of all, who are not in her communion, from the opportunity of ſerving their king and country, and enjoying the honours or emoluments of ſuch ſervices? Where is the equity, I ſay, that, inſtead of being ſatisfied, not merely with her own peculiar revenues, but with that ſhare of civil offices and

of the legiſlature, to exclude all from civil offices but thoſe who have a real affection for the conſtitution and worſhip of the church, they would doubtleſs have appointed the teſt to be, not merely once taking the ſacrament at church, but a ſtated and conſtant conformity to all its religious ſervices.

emoluments which would fall to the members of her communion, and which undoubtedly would be by far the largeſt and moſt conſiderable, ſhe muſt poſſeſs an excluſive right to the whole? and where, in reaſon and juſtice, is her title to ſuch a monopoly? The "kingdom of Chriſt is "not of this world;" and religion, much leſs any peculiar form of it, can be no foundation for a claim to all civil offices and emoluments in any country; becauſe *dominion is not founded in grace*, nor are the *ſaints of any communion*, as ſuch, entitled to all thoſe good things, which thoſe who are poſſeſſed of dominion have to beſtow.

Theſe are principles ſo juſt and indiſputable, that ſome of the warmeſt friends of eſtabliſhments and excluſive teſts have been forced to confeſs, that they are, neither of them, founded in *truth*, but in *utility*: that when a particular religion is eſtabliſhed by law, and fenced with the ſole and excluſive privilege of enjoying civil offices and emoluments; this is not done on account

count of its being the *true religion*, but the *religion of the majority*; which, as ſuch, is taken into alliance by the ſtate, and ſo eſtabliſhed and privileged for the publick good. Provided, therefore, it can be ſhewn, that this goodly fabrick no way contributes to publick utility, it cannot any longer be ſupported, but muſt fall to the ground.

As for the ſuppoſition, that it conduces to the utility of the *ſtate*, that I have already conſidered. As for the utility of the *church*, if by that be meant her profit or emolument, ſhe ſhould, as I before obſerved, inſiſt upon no gain but that which is fair and honourable, none to the prejudice of other good ſubjects, where they have a juſt and equitable claim.

But if this publick utility is underſtood to refer to the *ſecurity* and *protection*, which is apprehended to be afforded to the church, by the excluſion of all others, except the members of her own communion, from civil offices; that is a point which remains

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now to be conſidered: For you tell us, that "the magiſtrate is bound to *protect* "the eſtabliſhed church, by admitting "none but its genuine members to offices "of truſt and emolument."

The danger of the church, and the ſtrength of that ſecurity which is afforded by a teſt-law, in caſe ſhe be in danger, hath, I think, been greatly magnified. Indeed, her danger ſeems to be a mere chimera. I am perſuaded, the church would be in no danger from the Proteſtant Diſſenters, who have very little diſpoſition to moleſt her; and would have leſs ſtill, if ſhe left them in full poſſeſſion of their civil rights. The removal of any odious mark of diſtinction, and ground of jealouſy and envy, as it leaves men more at eaſe, ſo in greater good humour with themſelves and others, and very little diſpoſed to quarrel about modes of faith and modes of worſhip. That is not, indeed, at all the temper of the preſent age; nor is it likely to be ſo of their poſterity, unleſs the ſpirit

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of perſecution ſhould ariſe in the church or ſtate. That would ſet in motion a certain ſpring and elaſticity there is in human nature, which riſes againſt oppreſſion. But in quiet and peaceable times, when principles of moderation and liberty univerſally prevail, this elaſtic ſpring is wholly relaxed. And the more liberal and equitable, therefore, the temper and conduct of the church and ſtate are, towards men of different religious perſuaſions, who are good ſubjects, the leſs danger is there of moleſtation to either. An equitable diſpoſition in the church, to permit all without exception to enjoy, in their full extent, their natural rights, would be a much greater ſecurity to her, than any excluſive or even penal laws. For, the principles of impartial liberty form the prevailing character of the preſent age, and are, in a manner, univerſal amongſt the Proteſtant Diſſenters. Liberty, religious liberty eſpecially, is their idol; in their attachment to which, for the moſt part, they

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are more tenacious, than they are in their affection to any peculiar diſtinguiſhing tenets, which divide them from the church, or from one another. And this liberty they would no more violate in others, than be eaſy to ſee it violated in themſelves *.

But

* Dr. Burton, (in his Commentariolus Thomæ Secker Archiep. Cantuar. memoriæ ſacer) ſpeaking of the oppoſition which hath been made to the ſcheme of eſtabliſhing biſhops in America, exclaims, "Iniqui homines & maligni! "qui libertatis, quam ipſi ſibi arrogant effrænatam, jus aliis "à ſe diſſidentibus concedi nolunt!" I am not certain whether theſe words refer to the American Preſbyterians and Independents, or to the Engliſh Diſſenters. Perhaps the Doctor would have no great objection to our underſtanding them both of the Americans and the Diſſenters; for he does not ſeem to have much complaiſance for either. However that be, I may venture to ſay of both, that ſo far from ſhowing themſelves, by their oppoſition to this ſcheme, to be the enemies, I apprehend, they have ſhown themſelves to be the friends, of liberty. When they are convinced, that the ſcheme of ſending biſhops to America hath not the advancement of eccleſiaſtical power in view, and will not be prejudicial to the liberty of Chriſtians of other perſuaſions; when the plan ſhall appear to be ſolely this, not only that the biſhops ſhall be inveſted with the mere powers of confirmation and ordination, and of regulating their own clergy, but ſhall be excluded, by expreſs act of parliament, or by provincial acts previouſly paſſed, and ſolemnly ratified

But if any could be found, who were diſpoſed to give the church moleſtation, while ſhe hath ſo vaſt a majority in the kingdom, and eſpecially in both Houſes of Parliament, (and I cannot ſee, that the repeal of the teſt would make any alteration in

ſed by act of parliament, (in ſome ſuch manner as the acts of ſecurity of the two churches, in the union between England and Scotland,) from enjoying the leaſt degree of temporal power; (always ſuppoſing, that the ſalaries for their ſupport ſhall be drawn only from thoſe who profeſs to be of the Epiſcopal perſuaſion;) then, I apprehend, if I may judge of the Americans by what I have heard of them, and of the Diſſenters by thoſe with whom I am acquainted, they will be ſo far from oppoſing, that they will be advocates for ſuch a ſcheme. And in ſo doing they will allow others the very ſame liberty which they claim themſelves. For, though they are friends to liberty, they are enemies to temporal power in the hands of eccleſiaſtics, preſbyters as well as biſhops. Some things have dropped from the Archbiſhop, in his letter to Mr. Walpole, which give ground to ſurmiſe, that the whole of what is intended, is not ſo mild and moderate as his panegyriſt ſuppoſes. "The propoſal "is," ſaith the Archbiſhop, "that the biſhops ſhall exerciſe "ſuch juriſdiction over the clergy of the church of England "in thoſe parts, as the late biſhop of London's commiſſa-"ries did, or *ſuch as it might be thought proper that any fu-"ture commiſſaries ſhould*," (and who knows what that may be?) "if this deſign were not to take place," p. 2. And

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in this reſpect,) the apprehenſion of danger from the Diſſenters being admitted to ſuch offices, as a few amongſt them may be qualified for, and likely to obtain, muſt be entirely groundleſs. It is my firm opinion, that the repeal of the teſt would be a greater

to the queſtion, "How any perſons can undertake to promiſe, that no additional powers ſhall hereafter be propoſed and preſſed on the colonies, when biſhops have once been ſettled?" he anſwers, "that, ſtrictly ſpeaking, nothing of that nature can ever be promiſed in any caſe," p. 6, 7. And he ſaith, that "there ſeems no neceſſity, that the affair ſhould ever come into parliament; for, as the law now ſtands, ſuffragan biſhops may be ordained with the King's approbation; and the biſhop of London may ſend theſe, inſtead of preſbyters, for his commiſſaries," p. 21. If the American Preſbyterians and Independents, and their friends the Diſſenters in England, are more jealous than they need be of the ſcheme of ſending biſhops to America, it is owing to the evident reluctance there is in the moſt moderate patrons of this ſcheme, to the Epiſcopal power being laid under any poſitive reſtraint or limitation, and to their expreſſing a deſire of having that matter left entirely open; as well as to the conduct of the ſociety for propagating the goſpel, who expend a great diſproportion of their revenues in countries where Chriſtianity is already in a flouriſhing condition, merely to proſelyte the inhabitants to Epiſcopacy; and whoſe miſſionaries are, many of them, of the old *jure divino* ſtamp, who think Epiſcopacy

a greater diſadvantage to the body of Diſſenters, than to the eſtabliſhed church; that it would rather diminiſh than increaſe their numbers. For, in general, men are not much inclined to ſhock all the principles on which they have acted; and deſert a party with which they are connected, at once, on a lucrative motive; but they may be gradually ſoftened and relaxed

copacy and the uninterrupted ſucceſſion eſſential to the validity of religious ordinances, and to the Chriſtian as well as the miniſterial character. It is very unhappy, if the ſociety, as the Archbiſhop intimates, p. 4. can procure "few to go "from hence, in the character of miſſionaries, but perſons "of deſperate fortunes, low qualifications, and bad or "doubtful characters;—a great part of whom," ſaith he, "are Scotch; and I need not ſay," he adds, "what "chance there is, that Epiſcopal clergymen of that coun-"try may be diſaffected to the government." In this ſtate of things, the Americans, thoſe eſpecially who are not of the Epiſcopal perſuaſion, may reaſonably expect ſome barrier, ſome ſecurity, ſuppoſing biſhops ſent to America with ſpiritual characters only, againſt their aſſuming, or poſſeſſing afterwards, any degree of temporal authority. And unleſs this be done, the oppoſition of them and their friends here, to ſuch a deſign, is no proof that they are enemies to the liberties of others, but only that they are willing to preſerve their own.

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in their principles, by the new connections into which the poſſeſſion of publick offices would introduce them, by the influence of general cuſtom, and of what is eſteemed polite and faſhionable, and by the example of their ſuperiors, or of the majority; provided they are not diſguſted and revolted by any ungenerous compulſion or reſtraint. In ſuch circumſtances, no conſiderable numbers, if any, would be found mad enough to embark in the dangerous enterprize of overturning an eſtabliſhment, ſo well guarded and fenced by law, as that of the church of England, and to which the nation hath been ſo long accuſtomed. And provided, in any future time, ſhe ſhould be improved in her conſtitution, in her publick forms, and in the terms of conformity to her lay and miniſterial communion, there would be no human proſpect, ſcarcely a poſſibility, of ſhaking her foundations, ſhould any be inclined to attempt it. For, the broader the baſis on which ſhe ſtands, ſhe ſtands the firmer. And

therefore, comprehenſive, not excluſive meaſures ſhould, in all prudence, be adopted and purſued by thoſe who would approve themſelves her trueſt and beſt as well as warmeſt friends.

If, to all theſe conſiderations, you ſhould oppoſe the deſtruction of the eccleſiaſtical conſtitution, in the laſt century, by the ſectaries: I beg leave to obſerve, that the true cauſe, and at bottom the only cauſe, of the overthrow of the church at that time, was, that her leading men and governors had been, in ſome caſes the authors, and in others the inſtruments, of civil as well as eccleſiaſtical tyranny. Their oppreſſions and perſecutions had been deeply felt by the puritans, who had ſome zeal for religion; and their ſlaviſh doctrines, and arbitrary meaſures, pernicious and fatal as they were to civil liberty, had given ſuch a turn to mens minds in general, as enabled ſome religious zealots, in conjunction with the Scots, who inſiſted

upon the deſtruction of Epiſcopacy before they would move to the aſſiſtance of the parliament when their affairs were at a low ebb, to overturn the eccleſiaſtical conſtitution. But what is the inference from hence? that the permitting of the Diſſenters to enjoy the common rights of good ſubjects, would endanger the church a ſecond time? I think the reverſe: that, as the tyranny of the church and ſtate proved, by a ſtrange concurrence of circumſtances, the ruin of both; lenity, and ſome degree of the ſame magnanimity in this caſe, which, you ſay, was diſcovered in the toleration, would, in this inſtance as well as in the former, tend to her eſtabliſhment and preſervation. For, as we ſee in fact, that every inſtance of it, which hath been hitherto exerciſed, hath had that effect; we have reaſon to conclude, that every further inſtance of it would undoubtedly have the ſame.

Beſides, what ſecurity can be derived to the

the church from a man's now and then receiving the ſacrament in it, for the ſake of a good place? That is, I own, a mark of *his affection for the place*; but very little, I am ſure, of his affection for the church; to which he may, notwithſtanding a compliance obtained by a bait ſo alluring, be ſtill a falſe friend, or a determined enemy.

And, as there are theſe objections to a teſt in general, affecting Proteſtant Diſſenters; ſo there are ſome, I think, no inconſiderable ones, to the particular nature of the teſt by law appointed; namely, that leading perſons to take the ſacrament with wrong views, who would not otherwiſe do it at all, and who have no proper notions of and right diſpoſitions for it, it gives ground to conſider it as an abuſe of a ſacred ordinance, which was appointed for the ends of religion only, to temporal and worldly views and purpoſes; and as a ſtrong temptation to hy-

pocriſy: and though they are criminal who do not reſiſt it; yet, neither are they innocent, who lay the ſnare in their way.

I am, Sir, &c.

LET-

LETTER VII.

SIR,

IT will be found, I believe, that the obſervations which I have occaſionally made upon the character of the Proteſtant Diſſenters are ſtrictly juſt: that their principles are calculated to render them the firm and invariable friends of the civil conſtitution of their country. You obſerve, that "in all ages and countries *civil and eccleſi-* "*aſtical tyranny* are mutually productive of "each other *." I think it muſt be equally true, that *religious* and *civil liberty* have a reciprocal influence in producing and ſupporting one another; and accordingly the

* Comment. vol. iv. p. 103.

Proteſtant Diſſenters are at leaſt as likely as any, to be warmly and ſteadily attached to both. I cannot forbear, therefore, taking notice, with ſurprize, of a paſſage in your chapter of *Præmunire*, which, notwithſtanding I have endeavoured to put the moſt favourable conſtruction upon it, I cannot reconcile to the ſuppoſition of your having any tolerable idea, what the principles are which generally prevail amongſt the Proteſtant Diſſenters. After a very extraordinary panegyrick upon the church of England, and the clergy of her perſuaſion *, of which I am not inclined, in the

* "It is the glory of the church of England," you ſay, "as well as a ſtrong preſumptive argument in favour of "the purity of her faith, that ſhe hath been (as her prelates "on a trying occaſion once expreſſed it: Addreſs to Jam. II. "1687.) in her principles and practice ever moſt unque"ſtionably loyal. The clergy of her perſuaſion, holy in "their doctrines, and unblemiſhed in their lives and con"verſation, are alſo moderate in their ambition, and en"tertain juſt notions of the ties of ſociety and the rights "of civil government, As in matters of faith and mora"lity they acknowledge *no guide but the ſcriptures*, ſo, in "matters of external polity and of private right, they de-

"rive

the leaſt, to diſpute the propriety, you give us a ſtriking contraſt in theſe remarkable words: "Whereas the principles of "thoſe who differ from them, as well in "one extreme as the other, are equally "and totally deſtructive of thoſe ties and "obligations by which all ſociety is kept "together; equally incroaching on thoſe "rights, which reaſon, and the original "contract of every free ſtate in the uni-"verſe, have veſted in the ſovereign

"rive all their title from the civil magiſtrate; they look "up to the King as their head, to the parliament as their "lawgiver, and pride themſelves in nothing ſo juſtly, as "in being true members of the church emphatically *by* "*law* eſtabliſhed. Whereas the principles of thoſe who "differ," *&c.* It cannot be doubted, that a clergy ſo holy and moderate and unambitious, and ſo warmly attached to the SCRIPTURES *as their* ONLY *guide in matters of faith and morality*, and to the civil magiſtrate in reſpect to matters of external polity, will do their utmoſt to procure a reform of various particulars in their eccleſiaſtical conſtitution, diſcipline, and worſhip; and eſpecially a repeal of the twentieth article, by which the CHURCH is ſaid to have *power to decree rites and ceremonies*, and *authority in matters of faith*; and likewiſe of the law, by which the *four firſt general councils*, in *conjunction* with the ſcriptures, are made judges of hereſy.

" power; and equally aiming at a diſtinct " independent ſupremacy of their own, " where ſpiritual men and ſpiritual cauſes " are concerned *."

Popiſh principles, undoubtedly, are one extreme to which you here allude; and, I think, diſſenting principles, at leaſt when they are carried to their utmoſt length, muſt be the other. It is true, the examples, which you immediately produce in ſupport of this branch of your aſſertion, are of ſome enthuſiaſts both at home and abroad in the laſt century: " The dread- " ful effects," you ſay, " of ſuch a reli- " gious bigotry, when actuated by erro- " neous principles even of the Proteſtant " kind, are ſufficiently evident from the " hiſtory of the Anabaptiſts in Germany, " the Covenanters in Scotland, and that " deluge of ſectaries in England, who " murdered their ſovereign, overturned " the church and monarchy, ſhook every

* Comment. vol. iv. p. 103.

" pillar

" pillar of law, juſtice, and private pro-
" perty, and moſt devoutly eſtabliſhed a
" kingdom of the ſaints in their ſtead."

The only objection I think proper to make to the ſentiment ſuggeſted in this round and warm paragraph, is, that it cannot vindicate the univerſality of your cenſure on the principles of thoſe who, among Proteſtants, differ from the church; unleſs upon ſuppoſition, that the principles of all Proteſtant Diſſenters are of the ſame nature and tendency with thoſe, which, being carried to an extreme by the Anabaptiſts in Germany, and the Fifth-monarchy-men in England, in the laſt century, produced very extravagant conſequences. This conſtruction offers itſelf ſo readily, that, if it was not your intention to ſtigmatize the Diſſenters of the preſent age in any degree, but only ſome particular enthuſiaſts of the laſt age both at home and abroad, it might ſurely have been expected, that ſome exceptive or qualifying expreſſions ſhould have been inſerted in their

their favour. And after what you have ſaid of the modern Diſſenters, in your Reply to Dr. Prieſtley, I hope this will be done in future editions.

In the mean time, as I apprehend this paragraph will be underſtood to intimate, that the Diſſenters hold principles unfriendly to ſociety, and to civil government; principles which, in the extreme, have produced the moſt fatal effects, both at home and abroad; in juſtice to them, (though not in oppoſition to you, if you really do not intend this cenſure for them,) I ſhall offer a few remarks, in order to ſhow, that the principles of the Diſſenters are entirely the reverſe both of Popiſh principles, and of thoſe enthuſiaſtic principles which you mention, and can never produce the dreadful conſequences to civil government which flow from either.

The church of Rome, indeed, aſſerts her own ſupremacy over the civil power, in

in every country *. And accordingly ſhe demands an abſolute ſubmiſſion in all her members, ſubverſive not only of the rights of a free people, but of all the obligations of ſociety, and the very foundations of civil polity. She claims an utter exemption of

* This claim the church of Rome hath always advanced, and, where-ever ſhe hath had opportunity, exerciſed, without ever in a ſingle inſtance giving it up. Since the Reformation, the times have been daily growing more unfavourable to the exerciſe of that enormous power, which formerly held the civil authority all over Europe in abſolute ſubjection and dependence. But the church, ever attentive to her favourite ſupremacy, ſtill takes every method to prevent its further depreſſion, and even to reſtore it, if poſſible, to its former glorious exaltation. With this worthy deſign, a large folio volume, in Latin, in a ſmall type, was printed in England (without any name of place or printer) in the year 1753, (of which I have a copy now in my hands,) under the care of the Jeſuits, and the impreſſion ſent to Portugal, for the uſe of the eccleſiaſticks in that kingdom. It is intitled, Opuſculum-Theologico-Juridicum, de utroque Recurſu: in Judicem, ſcilicet, competentem et incompetentem: quinque libris diſtinctum: in quibus agitur, in lib. 1. De Recurſu ad Judicem competentem, puta ab Eccleſiaſtico ad Eccleſiaſticum, de ſæculari ad ſæcularem, vel *ad Eccleſiaſticum Superiorem*: in 2do verò, De eodem ad Judicem INCOMPETENTEM; puta, ab ECCLESIASTICO ad SÆCULARIA TRIBUNALIA, &c. So that,

of all eccleſiaſtical perſons, and of all their rights and poſſeſſions, from the juriſdiction and authority of the magiſtrate. But is there the leaſt ſimilarity to this, in the ſentiments of the Proteſtant Diſſenters? No, certainly. It is their opinion, I own, that

that, according to the doctrine which this book is intended to eſtabliſh, by an infinite number of reaſons and authorities (ſuch as they are) from the decrees of Popes, of councils, of the holy office of Inquiſition, and of numberleſs Romiſh canoniſts and caſuiſts, the *civil* power hath NEVER any controul over the *eccleſiaſtical*, but the *eccleſiaſtical* ALWAYS over the *civil*. And even the power, aſſumed and exerciſed by the Popes in the darkeſt ages, of depoſing emperors, kings, and all other princes and magiſtrates, is explicitly aſſerted and maintained. This work, ſo much adapted to promote the glory of holy church, is publiſhed under the patronage of the King of Kings; Sub *Regis Regum* patrocinio, omnibus Regibus, Principibus, at Judicibus, tum Eccleſiaſticis, tum Sæcularibus, dicatum. The author the Biſhop of *Algarve*: Autore Excellentiſſimo ac Reverendiſſimo D. Ignatio à S. Tereſia Portucalenſi, Ex-canonico Regulari S. Auguſtini Congregationis S. Crucis Collimbrienſis, Archiepiſcopo Goano, Primate Orientis, Indiani Status ſemel, et iterum, Sæculari Ex-gubernatore: Poſtea vero Eccleſiæ Algarbienſis Epiſcopo, et ejuſdem Regni Armorum Gubernatore. It is a performance calculated to free the votaries of Rome not only from the obligations of civil but of *divine* authority; furniſhing ſuch diſtinctions,

that the magiſtrate ſhould not expect, much leſs exact, obedience or ſubmiſſion in matters purely religious; and that, in things pertaining to conſcience, it is the duty of the ſubject to act upon the principle of the apoſtles and primitive Chriſtians; that is, to "obey God rather than men *." But then there is nothing in this ſentiment, in the ſmalleſt degree, inconſiſtent with *civil obedience*: "rendering unto God the "things which are God's," is no objection to "rendering unto Cæſar the things "which are Cæſar's †." The Diſſenters are ſo far from ſetting up the ſuppoſed intereſts of religion, or, as you expreſs it, "ſpiritual men," or "ſpiritual cauſes," againſt lawful magiſtracy, or the peace

ſtinctions, evaſions, and deciſions, with regard to the moſt FLAGITIOUS and even UNNATURAL crimes, as amply inſtruct men how to commit them, *ſalvâ conſcientiâ*. Is not this aſtoniſhing, in modern times, in a man of letters, and, as I have been informed, polite and converſible?

Tantum RELIGIO potuit ſuadere malorum!

* Acts v. 29. † Matth. xxii. 21.

and

and good order of ſociety, that they allow of the exemption of none from the authority of the civil magiſtrate; holding all to be equally under his juriſdiction; and that no plea of ſacred character, or of religion and conſcience, is to be admitted in bar to his procedure, in matters of a criminal, or merely civil nature. And as, in their opinion, it is his duty to *protect* all *good ſubjects* in the profeſſion of their religious principles; ſo, without any regard to their religious principles or profeſſions, he is to *puniſh* all *offenders* againſt the *peace* of ſociety. Now, how is this "ſetting up an "independent ſupremacy of their own, "where ſpiritual men and ſpiritual cauſes "are concerned?" If, as they ſay, all men are to judge for themſelves, and act accordingly, in matters of faith and worſhip, and the ſalvation of their ſouls; if, in theſe reſpects, they are not to controul, uſurp upon, and domineer over one another, and are at the ſame time to be *all alike ſubject to the civil magiſtrate*; this ap-

pears to me to be ſo far from ſetting up an *imperium in imperio*, that it leaves no *imperium*, no ſupremacy, indeed, *no power at all*, in ſociety, *but that* of the civil magiſtrate. Theſe principles, therefore, can never iſſue in a diſtinct independent ſupremacy of thoſe who profeſs them, whether *ſpiritual men* or others. The principles of the Papiſts, indeed, directly lead to and ſupport this ſupremacy: the principles of the Diſſenters are diametrically oppoſed to it.

And as their principles are quite of another nature, another genius and complexion, than thoſe of the Papiſts; ſo are they, than thoſe of the enthuſiaſts whom you have mentioned. I know no Diſſenter on earth, who holds, that *dominion is founded in grace*, and that *the ſaints muſt rule the world*; or any principles which have the leaſt tendency and aſpect towards ſuch a concluſion. On the contrary, they all to a man aſſert, that religion is ſo far from veſting in its profeſſors a title to *dominion*,

minion, that it is no exemption from *civil ſubjection*. It is in matters of conſcience only, they apprehend, they are alone accountable to God; and that not ſo as to excuſe thereby any criminal overt acts, inconſiſtent with the peace of ſociety: *theſe* the magiſtrate muſt puniſh, from whatever principle they proceed, from any or none, and whatever plea of that ſort is offered in their favour. Some enthuſiaſts formerly, particularly thoſe you have cenſured, made one compoſition of religion and politics; the Diſſenters, on the contrary, keep them wholly diſtinct, as being of a different nature, and relating to different purpoſes, and different intereſts; the one to the ſoul, the other to the body; the one to the preſent world, the other to the future. Theſe enthuſiaſts were ſtrenuous aſſertors of the monarchy of King Jeſus, that his kingdom was of this world: the Diſſenters zealouſly maintain, in conformity with reaſon and ſcripture, that

" Chriſt's

"Chriſt's kingdom is not of this world *," and doth not at all interfere with the office of the magiſtrate; who, in their opinion, is ſupreme over all perſons within his dominions, of whatever religion, of any or none. I will venture to affirm, that it is impoſſible to erect the ſyſtem of theſe enthuſiaſts, as a ſuperſtructure, on the principles of the Diſſenters, as a foundation. The principles of the latter are totally incompatible with the whole ſcheme of the former, and, of all others, moſt effectually overturn and deſtroy it. In a word, their principles with reſpect both to church-authority and to civil government, are preciſely the ſame which the late Biſhop Hoadly advanced, and ſupported in an unanſwerable manner, doing thereby ſuch ſervice to the cauſe of true Proteſtantiſm, and of the royal ſucceſſion in the houſe of Hanover, as will always be remembered with gratitude by the true

* John xviii. 36.

friends of that auguſt family, and of the liberties of their country.

I ſhall only add, in juſtice to Dr. Prieſtley, whom you call a willing critic, (I ſuppoſe, you mean one inclined to put not the moſt favourable conſtruction upon your expreſſions,) that, I believe, every Diſſenter, I am ſure, every one with whom I have converſed, who had read that page in your Commentaries, which contains a compariſon between the principles and the conduct of the Papiſts and the ſectaries, underſtood you, in the moſt obnoxious paſſage of all, in the ſame ſenſe in which he did; namely, as referring to the modern Diſſenters; and were perhaps as much offended with it as he was: I refer to that clauſe, wherein you ſay, "As to "the Papiſts, their tenets are undoubted-"ly calculated for the introduction of all "ſlavery, both civil and religious; but it "may with juſtice be queſtioned, whether "the ſpirit, the doctrines, and the prac-

" tice of the ſectaries ARE better calcula-
" ted to make men good ſubjects *."

I ſhall not ſcruple to affirm, that there are no better ſubjects, and no better friends to the conſtitution of their country as a limited monarchy, defined and improved by the glorious Revolution, than the Proteſtant Diſſenters †; they pray for the con-

* Comment. vol. iv. p. 52.

† " The Diſſenters are ſincere well-wiſhers to the civil " part of our preſent happy eſtabliſhment; and they are to " be eſteemed and loved for it," ſaith the late Abp. Secker, in his Letter to Mr. Walpole concerning biſhops in America, p. 24, 25. Dr. Burton, the Archbiſhop's panegyriſt (in his Commentariolus Thomæ Secker, &c. p. 27.) hath given a different character of certain perſons, whom he ſtiles, " Diſſentientium greges quidam:" After mentioning the Archbiſhop's ſcheme of ſending biſhops to America, he adds: fremunt tamen illico et tumultuantur *Diſſentientium greges quidam* irritabiles et pervicaces; iidem in Republicâ Cives ſeditioſi, in Eccleſiâ Principatum adepti, Tyranni intolerabiles. Whether the author levels this invective againſt the Preſbyterians and Independents in the colonies, or the Diſſenters at home, I will not be poſitive. If he means the Americans, they perhaps would tell him, that he hath groſsly miſrepreſented both their civil and their religious principles, and would excuſe him on the ſcore only of that noble privilege, which Atticus allows all rhe-

continuance of the Proteſtant ſucceſſion in the preſent illuſtrious royal family, and for the *ſalus regis et populi*, in the words, and with the fervour, with which father

toricians: Conceſſum eſt Rhetoribus ementiri in hiſtoriis, ut aliquid dicere poſſint argutius. Cicero de claris oratoribus, c. 11. But if he means the Diſſenters, I am content to aſcribe it ſolely to his total ignorance of their character, otherwiſe he would know, that eccleſiaſtical authority, and much more eccleſiaſtical tyranny, in the hands of either preſbyters or biſhops, is their entire averſion. As for ſedition, that charge, I think, is unjuſt even againſt their anceſtors the puritans; who, in general, were not a whit more ſeditious, or more enemies to limited monarchy and lawful authority, than thoſe great patriots of the church of England, who at that time oppoſed the deſigns of an arbitrary court, and the dangerous incroachments of prerogative upon civil liberty. And as to their deſcendants the modern Diſſenters, let his oracle the Archbiſhop be their compurgator; who had reaſon to know them better than his panegyriſt, as he was not only born of diſſenting parents, but received his education, together with the late excellent Biſhop Butler, in one of their academies, under a tutor, whoſe great learning and abilities would have been no little honour to either of our univerſities: Circumſtances, by the way, which this gentleman, in his great ingenuity and liberality of ſentiment, hath thought proper to paſs over in ſilence; whether, becauſe he imagined, they would be a diſgrace to the Archbiſhop, or an honour to the Diſſenters, or both, I pretend not to determine.

Paul

Paul prayed for the republick of Venice in his dying moments: ESTO PERPETUA!

But I have done: you have promiſed to correct thoſe paſſages in your next edition; and I have no doubt, you will make that correction in ſuch a manner as will be entirely ſatisfactory.

In thus addreſſing you, Sir, I would not be thought to entertain a fondneſs for controverſy. I know full well, how ſeldom it is, that controverſies anſwer any valuable end. They often ſour and imbitter mens minds, and give a keenneſs and acrimony to their tempers; beſides engroſſing a great deal of time and attention, which moſt men may employ to much better purpoſes. I am ſo convinced of this, that nothing ſhould have engaged me to appear in the character of a polemical writer, even ſo far as I have now done, in laying before you, and the publick, the preceding remarks, if I had not been fully perſuaded, that ſome poſitions and ſentiments which you have advanced,

have

have an unfavourable aſpect (and the more ſo as coming from an author of your diſtinguiſhed reputation) on the glorious cauſe of religious liberty: a cauſe nearly connected with, and of great importance to, the intereſts of truth, and the preſent and future happineſs of mankind.

Thus, Sir, have I freely, and I hope, inoffenſively, pointed out ſome of the *ſuppoſed* blemiſhes in your otherwiſe excellent and elaborate work; which many, who have a great opinion both of the author and of his performance, wiſh to ſee corrected. And, I am perſuaded, they will be ſo, as far as you ſhall be convinced they are *real* blemiſhes: Whether they are or not, muſt be left, Sir, to your conſideration, and to the judgment of the impartial publick.

I am,

With great reſpect, *&c.*

MUSEUM BRITANNICUM

PHILIP FURNEAUX.